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The Maritime Code of SPAIN & PORTUGAL.

W. W. REMES

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THE MARITIME CODES

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THE

MARITIME CODES

OF

SPAIN AND PORTUGAL

TRANSLATED AND ANNOTATED

BY

F. W. RAIKES, LL.D., Q.C.

LONDON
EFFINGHAM WILSON
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1896

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INTRODUCTION.

In the course of practice extending over a quarter of a century, mainly in the High Court of Admiralty and its successor, the Admiralty Section of the Probate, Divorce and Admiralty Division, I have frequently come in contact with an urgent necessity for some knowledge of the Maritime Law of Foreign Countries. Pursuing the study in the intervals of a busy life, I thought it might be that others, both those practising the Law and also Shipowners, Merchants, and Underwriters brought in contact with the practical effect of those Laws, might desire to see them in a more accessible form than they could be generally obtained in. I therefore proceeded to publish such translations as I made, or, in some cases, edited, in the *Nautical Magazine* and *Law Magazine and Review*, and now am trying the experiment of publishing in a separate form. The present volume gives the Maritime Law of the Iberian Peninsula. Having regard to the immense trade between England and the Peninsula, in ore, fruit and wine, not to mention other matters, and the large passenger traffic carried in British vessels between the Peninsula and South America, and the number of British vessels which call for coals and other purposes at Vigo, Teneriffe, Lisbon, Las Palmas, and St. Vincent, it would seem an appropriate commencement. If this little volume receives sufficient support the series will be continued.

I had the kind permission of the late Lord Hannen to dedicate the series to him. I now, alas, can only dedicate it to his memory, a memory which will survive, so long as the practice and study of the Law remains, as that of a great judge, and, as long as any of those who had the inestimable privilege of practising before him survive, as that of the most patient instructor and kindest friend.

F. W. RAIKES.

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ABBREVIATIONS.

B. Belgian Code of Commerce, Book II. (1875).
E. Egyptian Code of Maritime Commerce.
F. French Code of Commerce.
G. German General Mercantile Law Code.
H. Commercial Code of Holland.
I. Commercial Code of Italy.
I. (M.M.C.). Mercantile Marine Code of Italy.
P. Commercial Code of Portugal.
R. Commercial Code of Russia.
S. Commercial Code of Spain.
Sc. Maritime Law Code of Scandinavia, practically identical for Denmark, Sweden, and Norway.

In each of the above cases the number following the initial letter is the number of the article in the Code referred to.

When a number is in brackets it refers to a law of the date mentioned.

Arn. Arnould on Marine Insurance, 6th ed.
Lowndes. Law of General Average, Lowndes, 4th ed.
M. & P. Maude & Pollock, Merchant Shipping, 2nd ed.
M.S.A. Merchant Shipping Act, 1894.
Macl. Maclachlan on Merchant Shipping, 2nd ed.
News. Digest of the Law of Shipping and Marine Insurance.
J.D.I.P. Journal du Droit International Privé.
R.I.D.M. Revue Internationale du Droit Maritime.

The references to English and American Law Reports are those generally accepted.

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I.—SPAIN.

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SPAIN.

THE Code of Commerce of Spain, of which the Maritime Law forms Book III., came into operation by Royal Decree of the late King Alfonso XII., on 1st January, 1886. It is intended to supply defects found to exist in the old Code, which dated from 1st January, 1830, but claimed to be founded, so far as its Maritime part was concerned, on the most ancient of European Sea Laws, the *Consulado del Mar*, which is asserted by its warmest admirers to be nearly coeval with the Conquest of England by William I., and to have been the parent of all the Maritime Codes of the Middle Ages. There is in fact considerable doubt whether it originated in Barcelona, as the Spaniards contend, or in the Maritime States of Italy. It cannot be doubted, however, that the Code of Spanish Laws known as the "Siete Partidas" was in force in Spain in the middle of the thirteenth century, and that the fifth Part of it, containing the Maritime Laws, bears so strong a family likeness to the Rules of Oléron, the basis of English Maritime Law, that if these are not derived from it, both have probably a common parent in the *Consulado*. Perhaps the most notable points about the present Code are the following: It clears up the doubt existing, in England at all events, under the former Code, as to whether an owner is liable, up to value of his ship, for damage done by the ship when he is not on board (see *The M. Moxham*, P.D. 43, 107), or whether such damage, being an "excesso" or an act outside the duty of the captain, fell upon the actual wrong-doer. It is now clear from Tit. IV., § 3, and especially Arts. 826, 837 of that section, that the shipowner is liable. The whole chapter on Collisions is new, and contains a special provision for the case of "both to blame," Art. 827, and also for that of "inscrutable fault," Art. 826,

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viz., that in both cases each ship bears its own loss, but both are liable for damage sustained by their cargoes, which is in accord with the Common Law of England, prior to the Judicature Act, as distinguished from the Admiralty Law which is now enforced in all cases of collisions at sea, except that in the case of inscrutable fault, the cargo would only have recovered from the ship carrying it for breach of contract, not from the other for a tort which *ex concesso* could not be proved. On the question of Insurance, the Code unmoved by the York and Antwerp rules, and International Conferences, adheres closely to its former provisions, but, nevertheless, allows considerable liberty of contract, in this and other matters; thereby, perhaps, inclining to the English principle that justice is more likely to be attained by allowing persons *sui juris* to contract as they like, and leaving the courts to determine what they mean in case of a dispute, rather than by the Continental plan of prescribing *à priori* what contract is entered into. In 1893 a law was passed relating to Mortgages of Ships; that law and also parts of the Code, which though not exclusively concerned with Maritime Commerce are of interest in connection with it, will be found at the end of Book III. An abstract is also given of the existing regulations as to emigrants contained in a Royal Decree of 1890; as having regard to the large numbers of emigrants carried in British ships from Spain to the River Plata, it is important to British shipowners.

The method of procedure, which we call practice, in cases before the Commercial Courts, is contained in the Law of Civil Procedure, of 3rd February, 1881, and includes not only actual litigation but much of an administrative nature, such as surveys, adjustment of average, etc. As, however, in all such matters any sensible British subject would put himself in the hands of a native expert, an official interpreting ship broker, in the first instance, and not trust to a translation of a book of practice, it has not been considered necessary or indeed desirable to encumber this small work with any such translation.

The Code hardly refers at all to the question of territorial waters, but it must be borne in mind that Spanish authorities consider these waters to extend to six miles from the coast.

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CODE OF COMMERCE OF THE KINGDOM OF SPAIN.

BOOK III.

Maritime Commerce.

TITLE I.

Ships.

ART. 573. Merchant vessels are property which can be acquired and transferred by any of the methods recognised by law. The acquisition of a ship must be stated in a document in writing, and has no effect as regards third parties unless it is entered in the Mercantile Register.*

Moreover the property in a ship is acquired by *bonâ fide* possession for three years with a proper title duly registered.

Failing any of the requirements above-named, an undisturbed possession for ten years is necessary for the acquisition of the property.

A captain cannot acquire by prescription the property in a ship which he commands.

Cf. B. 1, 2, F. 190, 195, 430, G. 439, 440, H. 309, I. 481, 483, 917, 918, Sc. 2, 5.

574. Shipbuilders may, in building and fitting ships, use the materials and follow the plans which best suit their interests.

Shipowners and seamen are subject to whatever laws and regulations the Public Administration may lay down as to navigation, customs, health, and safety of ships, and other matters of a similar nature.

I. M.M.C., Tit. II., Chaps. I. and II.

* This Register is regulated by Art. 4 of the Decree sanctioning the new Code, Book I., Tit. II. of the Code, and the Provisional Decree of 21st December, 1885. The important sections will be found at the end of the Code; it is sufficient to say here that the Register consists of (1) a list of all persons engaged in trade; (2) of all companies or associations so engaged; and (3) in ports, of all ships and vessels belonging to the port, including under this denomination all hulks, pontoons, floating piers, lighters, etc., used for trading purposes.

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575. Part owners of a ship enjoy the right to pre-empt and withdraw from a sale made to strangers, but they can only avail themselves of it within the nine days following the entry of the sale in the Register, and on a deposit of the price mentioned in the Bill of Sale.

G. 470 diff., H. 324 diff., I. 495 diff., Sc. 5.

576. The sale of a ship is always considered to include such of her apparel, furniture and tackle, and machinery, if a steam-vessel, as are at the time under the control of the vendor.

The sale is not considered to include arms, ammunition, provisions or fuel.

The vendor is bound to deliver to the purchaser the certificate of the page of the entry of the ship in the Register down to the date of the sale.

G. 443, H. 309, I. 480 diff., Sc. 268, 271.

577. If the transfer of a ship takes place whilst she is on a voyage, the gross freights then being earned, and which are due since the last loading of the ship, belong to the purchaser, and the payment of the crew and other persons composing the ship's company for the same voyage are payable by him.

If the sale takes place after the arrival of the vessel at her destination, the freights belong to the vendor, who is liable for the payment of the crew and other persons composing the ship's company, unless in either case it has been otherwise agreed.

G. 441, H. 325, I. 489.

578. If the owner or owners of a ship voluntarily sell it whilst on a voyage, or at a foreign port, whether to Spaniards or to foreigners domiciled in the capital or port of another nation, the Bill of Sale must be agreed to before the Spanish Consul of the port where the voyage terminates, and the above-named Bill of Sale will be of no effect as regards a third party unless it is entered in the Consular Register. The Consul will at once send an office copy of the bill of purchase and sale to the Mercantile Register (*a*) of the port in which the vessel is entered and to which she belongs.

In all cases, the transfer of a ship must state expressly whether the vendor receives the purchase-money in full or in

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part, and if for a part or the whole he retains any charge on the said ship, where the sale is to a Spanish subject, the fact will be stated in the ship's register.

When a ship becomes unseaworthy in the course of a voyage, the captain must have recourse to the judge of the proper tribunal at the port he reaches, if in Spanish territory, and to the Spanish Consul if there is one, or if there is none to the Judge or Court or Local Authority if abroad, and the Consul, Judge, Court, or failing them the Local Authority will order a survey of the ship. If the consignee or insurer reside or have representatives at the place, they must be summoned to intervene in the proceedings so far as they are concerned.

H. 310 Diff., E. 3, 52.

(*a*) See Book I., Tit. II., Art. 26 *post.*

579. When the damaged condition of the ship and the impossibility of repairing it so as to continue the voyage are proved, its sale by public auction will be ordered, subject to the following rules :—

(1.) The hull, rigging, engines, stores, and such like articles are appraised, an inventory being drawn up, and facilities are given to those concerned in the sale to obtain information of these proceedings.

(2.) The Warrant or decree ordering the sale is posted up in the customary places (for public notices), an advertisement is inserted in the newspapers of the port, if there are any, in which the proceedings are taken, and in such other papers as the Tribunal may determine.

The time fixed for the sale cannot be less than twenty days distant.

(3.) These advertisements will be repeated at intervals of ten days, and the fact of the publication will be stated in the proceedings.

(4.) The sale will take place on the day fixed, with the forms prescribed by ordinary law for Judicial sales.

(5.) If the sale takes place abroad, the special rules prescribed for such cases must be observed.

P. 513, G. 444, 473, H. 311, 376, I. 513, Sc. 50, 271.

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580. In every Judicial sale of a ship for benefit of creditors, the debts will be marshalled in the following order :—

(1.) Debts due to the Public Exchequer, which are proved by means of an official certificate from the proper authority.

(2.) The Court fees for the proceedings, according to the scale approved by the Judge or Court.

(3.) Pilotage and tonnage dues, as well as sea and port dues, proved by proper certificates from the Heads of Departments authorised to collect them.

(4.) The wages of warehousemen and watchmen for the ship, and all other expenses incurred in its preservation from its arrival in port down to the sale, the payment or debt in respect of which is justified and approved of by the Judge or Court.

(5.) The hire of warehouses where rigging and stores of the ship are preserved, according to agreement.

(6.) The wages due to the Captain and crew for the last voyage, which are proved by means of a portage bill drawn up from inspection of the muster rolls and account books of the ship, passed by the head official of the Mercantile Marine, where there is one, and failing him by the Consul, Judge, or Court.

(7.) The repayment of (the value of) any portion of the cargo which the captain has sold to repair the ship, provided always that the sale is shown to have been ordered by Judicial warrant, carried out with the forms required in such cases, and noted on the ship's register.

(8.) The portion of purchase-money unpaid to the last vendor, debts owing for materials and work and labour in the building of the ship, if she has not been to sea, and those for repairing and fitting out the ship and supplying provisions and fuel for the last voyage.

The debts enumerated under this head must, in order to take advantage of this preference, be proved by a contract entered in the Mercantile Register, or if they are contracted for whilst the ship was on a

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voyage and before her return to her home port, they must show the authorisation required in such cases, and be noted in the ship's register.

(9.) Moneys borrowed on Bottomry on the hull, bottom, apparel, and furniture of the ship before commencing the voyage, proved by a contract entered upon legally and noted in the Mercantile Register; moneys borrowed in the course of the voyage, under the authority mentioned in the preceding article (579), under the same conditions, and the premium of insurance, proved by the policy of insurance or by a certificated extract from the Broker's books.

(10.) Indemnity due to the shippers for the value of goods shipped and not delivered to the consignees, or for damages sustained by them for which the ship is liable, provided always that either the one or the other is proved by a Judicial Decree or decision of an Arbitrator.

As to the priority of a Mortgage, see Law of Mar. Mort., 1893, §§ 31-33 *post*, and of salvage, Art. 842 *post*.

B. 4, 5, F. 191, 192, G. 757, 772, H. 313, 315, 317, I. 666, 674, 677, P. 578, Sc. 268, E. 5.

It should be observed that this Code has not followed the new Belgian Code in giving a lien or privilege for damage done to another ship by collision.

581. If the proceeds of the sale are insufficient to pay all creditors included in the same class, such proceeds will be divided amongst them *pro ratâ*.

B. Bk. II., 4, F. 191, G. 773, H. 314, I. 668, 669, E. 5, P. 576, Sc. 269.

582. All liabilities of a ship to (previous) creditors are deemed to be extinguished by a document showing a Judicial sale by public auction, assented to, and inscribed in the Mercantile Register. But if the sale be a voluntary one, and takes place whilst the ship is on a voyage, the creditors preserve their rights against the ship until her return to her home port, and for three months subsequent to the entry of the sale in the Register, or the return of the ship.

B. 6, F. 193, 196, G. 767, 768, H. 316 diff., I. 678, P. 579, Sc. 271, 273, E. 7, 9.

In the former Spanish Code, by Art. 601, creditors retained their rights for six months after the return of the ship.

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583. If it happens in the course of the voyage that the captain is obliged to contract one or other of the obligations mentioned in clauses 8 and 9 of Art. 580, he will have recourse to the Judge or Court, if he is in Spanish territory, and if not, to the Spanish Consul, if there is one, and failing him, to the Judge or Court, or proper Local Authority, and produce to him his certificate of the page of the inscription with which Art. 612 deals and the documents which prove the contract debt.

The Judge or Tribunal, the Consul or Local Authority, as the case may be, on inspection of the documents, will make a provisional note of its decision on the certificate, that (the debt) may be formally entered in the Register when the ship reaches her home port, or may be admitted as a legal and privileged debt in case of a sale before the ship's return, if the ship is sold in consequence of being condemned as unseaworthy.

The omission of this formality will render the Captain personally liable to the creditors who have been prejudiced.

See Law of Mar. Mort., 1893, §§ 33-35 *post.*

B. 24, 26, F. 234, 236, G. 686, H. 372, I. 509, 391, Sc. 49, 57, 176, E. 49.

584. Ships which are affected by a liability for the debts mentioned in Art. 580 can be arrested and sold judicially, in the way prescribed by Art. 579, in the port in which they are found, at the instance of any one of the creditors. But if they are laden and fitted out for sea, an arrest cannot be justified except for debts contracted for the fitting out and provisioning the ships for the same voyage, and, even in that case, the arrest will be raised if any one concerned in the adventure gives security for the return of the ship within the period fixed by the bond, obliging himself if she does not return, even in consequence of an accident, to pay the debt so far as it is legal.

A ship can only be seized in its home port for debts of any description whatsoever other than those included in Art. 580.

F. 197, 215, G. 446, H. 311, I. 672, 879, 881, Sc. 267, 271, E. 10, 29.

585. In all legal respects other than those which are modified or restricted by the law laid down by this Code, ships are treated as chattels.

B. 1, F. 190, H. 309, I. 480, E. 4.

Modified by Law of Mortgage of Ships, 1893, § 1 *post.*

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TITLE II.

Persons concerned in Maritime Commerce.

SECTION I.

*Shipowners and Ships' Husbands.**

ART. 586. The shipowner and ship's husband will be legally responsible for the acts of the captain and for obligations entered into by him, for repairing, fitting out, and provisioning the ship, so long as the creditor shows the sum claimed has actually benefited the ship.

By ship's husband (*naviero*) is understood the person whose business it is to provision and represent the ship at her home port.

It should be observed that the onus of seeing that the ship has actually benefited by the expenditure, thrown by this Code on the creditor, is new, and unknown in other Codes.

B. 7, F. (1885) 216, G. 452-454 diff., H. 321, I. 491, R. 253-255, Sc. 8, 222.

587. The ship's husband will, moreover, be liable civilly to third parties, for compensation arising from the conduct of the captain in the care of goods laden on board the ship, but he can clear himself from this liability by abandoning the ship and all its appurtenances, and the freight earned during the voyage.

B. 7, F. (1885) 216, H. 349 diff., P. 582, Sc. 7, 8.

See Art. 590 *post.*

588. Neither the owner nor ship's husband are liable for obligations contracted by the captain if they are beyond the scope of the duty and authority incident to his position, or which have been conferred upon him by them.

Nevertheless if the sums claimed have inured to the benefit of the ship, the liability will remain with the owner or ship's husband.

B. 7, F. (1885) 216, G. 452, H. 231, Sc. 8.

This Article apparently requires the creditor to ascertain not only that

* For many purposes the word *naviero*, which has been translated by ship's husband, is equivalent to "managing owner," but that word would be misleading in the case of a demised ship.

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the ship has benefited by the expenditure (see note to Art. 586 *ante*), but also to find out what powers have been conferred on the master by the owners.

589. If two or more persons are co-owners of a merchant ship, the co-owners are deemed to be a partnership (*compañia*). This company is governed by the wishes of the majority of its members.

The majority is constituted by that of the members voting.

If there are only two members, a difference of opinion in such a case will be decided by the vote of the larger shareholder. If the shares are equal it will be decided by lot.

The person representing the smallest share is entitled to one vote, and proportionately the other shareholders to as many votes as they have shares equal to the least.

A whole ship cannot be detained, arrested, or taken in execution for the private debts of a part-owner; the person proceeding can only deal with the share which his debtor has in the ship, without putting any obstacle in the way of its being sailed.

B. 11, F. 220 (1885), 17, G. 456-458, H. 320, I. 495.

The provision for escaping from the deadlock caused by a tie in voting is peculiar to Spain. See also Law of Mar. Mort., 1893, § 5, and Arts. 593, 596, 947 *post*.

590. Co-owners of a ship are civilly liable, in proportion to their shares, for the consequences of the acts of the captain, mentioned in Art. 587.

Each co-owner can divest himself of this liability by abandoning, in the presence of a notary, the share in the ship belonging to him.

B. 7, F. (1885) 216, G. 452-454, 474, H. 321, I. 491 diff., Sc. 9.

591. All the co-owners remain liable in proportion to their respective shares for the expenses of repairs of the ship, and for other expenses incurred at the desire of the majority.

Similarly, they are responsible in the same proportion for the expenses of provisioning, fitting out and furnishing the vessel with necessaries for the voyage.

B. 23, F. (1874) 233, (1885) 35, G. 486 diff., H. 323, 324, I. 495, 509, Sc. 9, 17.

592. The will of the majority with respect to repairing, fitting out and provisioning the ship in her port of departure,

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binds the minority, unless the minority part-owners renounce their shares, which the other co-owners must take, the price of the shares ceded being previously Judicially valued.

Further, the will of the majority will be binding on the minority as to the breaking-up of the co-ownership and sale of the ship.

The sale of the ship must be carried out by Public Auction, under the regulations of the Law of Civil Procedure, unless the co-owners unanimously agree on some other method, saving always the rights of pre-emption and withdrawal given by Art. 575.

B. 11, F. 220, G. 467, 468 diff., 473, H. 323-325, I. 495, 509, Sc. 12, 18, 22, 23.

593. The owners of a ship have a preferential right to freight it over those who are not owners, the conditions and rate of freight being the same. If two or more of them compete for this right, the largest part-owner will have the preference; if they have equal shares it will be decided by lot.

This provision is peculiar to the Spanish Code.

594. The part-owners will choose an agent who will represent them in the capacity of ship's husband. The nomination of a manager or ship's husband may be revoked at the discretion of the part-owners.

B. 10, G. 459, H. 326 diff., I. M.M.C. 53, 54, Sc. 10, 14.
See also Law of Mar. Mort., 1893, § 5 *post*.

595. The ship's husband, whether he is at the same time owner of the vessel, or only the manager on behalf of the owner, or of a society of co-owners, must be legally competent to trade, and be inscribed on the roll of traders of the Province.

The ship's husband represents the owners of the ship, and may, in his own name, and in that capacity, take action both Judicial and extra-Judicial in all that concerns trade.

B. 10, G. 460, H. 327, I. M.M.C. 52-56, Sc. 10.

596. The ship's husband may discharge the duties of captain of the ship, observing in all cases the disposition of Art. 609.

If two or more of the co-owners seek for themselves the post of captain, the difference shall be decided by the vote of the co-owners, and if the vote results in a tie, it shall be

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decided in favour of the part-owner who holds the largest share in the ship.

If the shares of the candidates are equal, the tie shall be decided by lot.

Sc. 24. The other Codes are silent on this point, though it is generally recognised that a part-owner may be captain. The question whether the captain is also ship's husband is, in Spain, of considerable importance, having regard to the provisions of Art. 588 *ante*.

597. The ship's husband will select the captain and settle accounts with him, and will contract in the name of the owners for such things as are necessary in all that relates to repairs, providing the crew, stores, provisions, fuel, and freight for the ship, and in general for whatever concerns the necessaries for the voyage.

G. 460, H. 323, 330, I. 494, Sc. 11, 61.

598. A ship's husband cannot arrange a new voyage, nor settle a new freight, nor yet insure the ship without the authority of his owners or the consent of the majority of the co-owners, unless these powers were conferred in the deed appointing him. If he insures without authority so to do, he is liable subsidiarily for the solvency of the insurer.

As to his power to mortgage the ship, see Law of Mar. Mort. (1893), § 5.

G. 460, H. 331, 333, Sc. 11.

599. A ship's husband who is manager for co-owners, shall render accounts to the part-owners of the result of each voyage of the ship, without prejudice to the books and correspondence concerning the vessel and its voyages being always held ready for inspection by the same persons.

G. 466, H. 338, Sc. 15.

600. When the accounts of the ship's husband, who is manager, are passed by a majority, the co-owners must pay the share of expenses proportioned to their holding, without prejudice to Civil or Criminal proceedings that the minority may deem it fit to take subsequently. To enforce payment, ships' husbands who are managers have an action of execution (*acción ejecutiva*), which is carried out in virtue of the consent of the majority and without other procedure than the identification of the signatures of the consenting parties.

G. 466, H. 339-340, Sc. 16, 17.

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601. If there are profits, the co-owners can recover from the ship's husband, who is manager, the portion corresponding to their share by an action of execution, without anything being requisite beyond the identification of the signatures of the document passing the accounts.

G. 469, Sc. 19.

602. The ship's husband will indemnify the captain for all disbursements that he has made out of his own funds or those of others, for the service of the ship.

G. 496-503, Sc. 268 (4).

603. Before the ship goes to sea, the ship's husband can discharge the captain and members of the crew at his pleasure, if they are not engaged for a fixed period or specific voyage, on paying them the wages they have earned under their contracts without any compensation, unless it has been otherwise agreed specifically and expressly.

B. 8, 48, 62, F. 218, 252, 270, G. 460, 515-517 (1872), 28, 57, H. 328, 411, 413, I. 494, 542, M.M.C. 74, 75, Sc. 61.

604. If the captain or other member of the crew is discharged in the course of the voyage, he will receive his pay down to his return to the port where he was shipped, unless the discharge was justifiable, everything being done in accordance with Art. 636 *et seq.* in this Code.

B. 62, 64, F. 272, 274, G. 515-520 (1872), 57-59, H. 328, 412, 439, I. 529, Sc. 65, 66, 92.

605. If the engagements entered into by the captain and crew with the ship's husband are for a fixed time or voyage, they cannot be discharged before the completion of their contracts, except on account of mutiny (*insubordinación en materia grave*), robbery, theft, habitual drunkenness, or damage done to the ship or its cargo wilfully or by negligence, either obvious or proved.

B. 8. 48, 62, 64, F. 218, 252, 270, 272, G. (1872), 57 diff., H. 436, 437 I. 542, Sc. 89.

606. When the captain is a part-owner, he cannot be discharged unless the ship's husband repays him the value of his share, which, failing an agreement by the parties, will be assessed by experts nominated in the manner established by the Law of Civil Procedure (*Ley de Enjuiciamiento Civil*).

B. 9, F. 219, G. 522, H. 329, I. 494, Sc. 61.

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607. If a captain who is a part-owner has obtained the command of the ship by a special agreement set out in the articles of partnership (*el acto de la sociedad*), he cannot be deprived of his place except for the causes mentioned in Art. 605.

This article is peculiar to the Spanish Code, but there would almost certainly be some clause in any deed of partnership enabling the co-partners to get rid of a captain who was part-owner, if guilty of such acts as are here referred to, or if he otherwise acted in a manner prejudicial to the partnership.

608. If the ship is sold voluntarily, all contracts between the ship's husband and master are terminated, reserving to the latter his right to what compensation may be due according to his agreements made with the ship's husband. The vessel which is sold remains liable as security for the payment of this compensation if, after an action has been brought for it against the vendor, he is found to be insolvent.

F. 208, Sc. 88.

Section II.

Commanders and Masters of Vessels.

609. Captains and masters must be Spaniards, and of legal capacity to make contracts in accordance with the regulations of this Code, and have shown that they have the skill and capacity, and fulfil the conditions necessary to command and sail a ship, as laid down in the Laws, Ordinances and Regulations for the Mercantile Marine and Navigation, and are not under any incapacity as laid down therein which prevents them from assuming this duty.

If the owner of a ship wishes to be his own captain and has not the legal qualifications, he will confine himself to the ship's commercial business (*administración económica del buque*), and entrust the navigation to some person possessing the qualifications required by the said Ordinances and Regulations. (See note to Art. 626 *post.*)

610. The functions hereinafter mentioned are inherent in the post of Captain or Master of a ship :—

(1.) In the absence of the shipowner, to choose and engage the crew, and if he is present to submit them for his

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approval, whilst the shipowner cannot engage any one in the face of his express refusal.

(2.) To command the crew and sail the ship to its port of destination, in conformity with the instructions he has received from the shipowner.

(3.) Whilst on board, to carry out, in conformity with the Laws and Regulations of the Mercantile Marine, punishments due to those who fail to fulfil his orders or are guilty of breaches of discipline, and to draw up depositions with regard to offences on board whilst at sea, which will be sent to the authorities who have cognisance of them in the first port at which the vessel touches.

(4.) In the absence of the shipowner or his agent, to engage freight for the ship, in conformity with the instructions he has received, and giving his utmost care to the owner's interests.

(5.) To take all proper steps to keep the ship seaworthy in all respects, buying what is necessary for the purpose where there is not time to await the owner's instructions.

(6.) In case of urgency whilst on a voyage, to make such repairs to hull and machinery, apparel and furniture, as may be absolutely necessary to prosecute and complete the voyage, but if he comes into a port where the owner has an agent, to carry out the work in conjunction with him.

See Law of Mar. Mort., 1893, § 35 (1) *post*.

(1.) B. 14, F. 239, G. 495, H. 343, I. 499, P. 498, Sc. 25.

(2.) B. 28, F. 238, G. 484, H. 354, 361, I. 514, R. 343, Sc. 31.

(3.) Sc. 102.

(4.) B. 22, G. 495-497, H. 371, 372, I. 506, 507, 509, Sc. 48.

(5 & 6.) B. 24, F. 232, 234, G. 495-497, H. 371, 372, I. 506, 507, 509, Sc. 32, 48, 49.

611. To carry out the duties mentioned in the preceding Article, the captain, when he finds himself without money or any prospect of receiving any from the owner, will procure it as follows :—

(1st.) By requesting advances from the agents of the ship or agents of the owner.

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(2nd.) By recourse to the consignees of the cargo or persons interested in it.

(3rd.) By drawing upon the shipowner.

(4th.) By borrowing the sum required on bottomry.

(5th.) By selling the quantity of cargo necessary to produce the sum required for the repairs absolutely necessary to enable the ship to prosecute her voyage.

In the last two cases, the captain must have recourse, if in Spanish territory, to the Judicial Authority, and if abroad, to the Spanish Consul, or if there is none to the Local Authorities, proceeding in accordance with the dispositions of Art. 583, and with what is laid down in the Code of Civil Procedure.

See Law of Mar. Mort., 1893, § 33 *post*.

B. 24, F. 234, G. 497, 503, 681, 686, H. 372, R. 383, Sc. 49.

612. The duties hereinafter mentioned are inherent to the post of captain :—

(1.) To have on board before undertaking a voyage an inventory in detail of the hull, engines, apparel, implements, spare stores, and other appurtenances of the ship; the Royal license, or license to navigate, the muster roll of the persons composing the crew and the shipping articles entered into with them, a list of passengers, a bill of health, the certificate of registration, which shows the ownership of the vessel and all charges upon her up to its date, the charter parties, or certified copies of them, the bills of lading or Custom House permits for the cargo, and the report of survey or examination by experts, if the survey has been held at the port of departure.

(2.) To have on board a copy of this Code.

(3.) To have three books, folded and stamped, with a note at the beginning of each, stating the number of pages that it contains, signed by the Maritime Authority, or failing it by other proper authority.

In the first book, which is called the log-book (*diario de navigación*), will be noted day by day the state of the weather, the winds that prevail, the courses steered, the gear used, the power indicated by the engines when they are employed, the distances run, the manœuvres executed, and other incidents of

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the voyage; there will further be noted damages sustained by the vessel in its hull, engines, apparel and furniture, from whatever cause they arise; as also deterioration and damage that the cargo experiences, and the things jettisoned and the necessity for jettison, if it takes place. And in cases of a serious decision, which requires a council of the officers of the ship or even of the crew and passengers to be assembled or held, the votes taken will be noted. To make up these notes the deck log and engineers' rough log kept by the engineers will be used.

In the second book, called the account book (*de contabilidád*), will be entered all the receipts and payments on account of the vessel, noting with each entry from what the receipt arises, and whether the disbursement is for stores, repairs, purchase of spare spars or goods, provisions, fuel, fitting out, wages, or other things of whatsoever nature they may be. Moreover, a list of all the members of the crew will be inserted, showing their residences, wages and salaries, and what they receive on account, whether directly or as allotments drawn by their families.

In the third book, called the cargo book (*de cargamentos*), will be noted the shipment and discharge of all merchandise, with their marks and packages, the names of the shippers and consignees, ports of loading and discharge, and freights earned. In the same book will be entered the names of passengers, and the places where they join, the numbers of their baggage, and the amount of their passage money.

(4.) If the shippers and passengers require it the officers of the ship and two experts will survey the ship before she receives her loading, to assure themselves that she is staunch, that her apparel and machinery are in good condition, and that she has the fittings necessary for seaworthiness, and the captain will keep a certificate of that report of survey signed by all who made it, to save his responsibility. The experts will be nominated, one by the captain of the ship and the other by those who required the survey, and if they disagree a third will be nominated by the Maritime Authority of the port.

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(5.) To remain constantly in the ship with his crew whilst receiving cargo and to watch its stowage carefully; not to allow any merchandise or articles of a dangerous character to be shipped, such as inflammable or explosive substances, without the precautions which are advisable for packing, moving and isolating them, not to permit any cargo to be put on deck which from its position, size or weight interferes with the working of the ship and may cause danger to it, and in case the nature of the merchandise, the peculiar character of the voyage and especially the favourable season in which it is undertaken, allow any cargo to be carried on deck, he must listen to the opinion of the ship's officers and obtain the consent of the shippers and shipowner.

(6.) To take a local pilot at the expense of the ship in all cases where it is necessary for navigation and more particularly when he has to go into a port, channel or river, or to make a roadstead or anchorage which neither he nor the officers or crew know.

(7.) To be on deck when making the land, and to take charge on going in or out of ports, channels, bays and rivers unless he has on board a local pilot who is doing his duty, and not to be away from the ship for a night unless for some special reason or on duty.

(8.) To present himself on arrival at a port of refuge, if in Spain to the Maritime Authority, if abroad to the Spanish Consul, within twenty-four hours, and make a deposition of the name, port of registry and port of departure of the ship, what cargo it has and the cause of putting in, which declaration will be viséd by the Authority or Consul, if on examination it appears to be right, and they will then give a suitable certificate to prove his putting in and the reasons which caused it. Failing a Maritime Authority or a Consul, the deposition must be made before the Authority of the place.

(9.) To take the necessary steps before the proper authority to have entered on the Mercantile Register in which

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the ship is inscribed, debts contracted in conformity with Article 583.

(10.) To carefully collect and preserve all papers and effects of any member of the crew who dies on board the ship, drawing up a detailed inventory with the assistance of passengers, or, if there are none, then of the crew as witnesses.

(11.) To regulate his conduct by the rules and orders contained in the shipowner's instructions, being held responsible for what he does contrary to them.

(12.) To report to the shipowner when the vessel puts in, the reason of his arrival, taking advantage of the facilities that semaphores, telegraph and mails present as the case may be; to inform him of cargo received, giving the names and residence of the shippers, of freights earned and of sums borrowed on bottomry; to advise him of his departure, and of any affairs and news which concern him.

(13.) To observe the regulations as to placing lights and the measures to be taken to avoid collisions.

(14.) To remain on board when the vessel is in danger until the last hope of saving the ship is lost, and before abandoning her, to take counsel with the ship's officers, acting as the majority decide, and if obliged to take to the boats to manage before everything else to take the (ship's) books and papers, then articles of the greatest value, being bound to prove, in case of the loss of the books and papers, that he did his utmost to preserve them.

(15.) In case of shipwreck to enter a formal protest in the first port at which he arrives, before the proper authority or Spanish Consul within twenty-four hours, stating in it all the incidents of the shipwreck, in conformity with section 8 of this Article.

(16.) To fulfil the duties which the Laws and Regulations as to navigation, customs duties, health, and other matters impose on him.

(1.) B. 17, F. 226, G. 480, H. 357, I. 500, 503, P. 499, 504, Sc. 26, 27, E. 41, M. & P. 139, 143. As to the Cert. of Registration see Law of Mar. Mort. (1893) *post.*

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(2.) H. 357, Sc. 27, E. 41.

(3.) B. 15, F. 224, G. 486, H. 358 diff., I. 500, P. 499-508, Sc. 35, 36, E. 38, 39, 41, M. & P. 133, 141, 142.

(4.) B. 16, F. 225, G. 480, H. 347, I. 502, M.M.C. Ch. VII., P. 505, Sc. 26, E. 40.

(5.) B. 20, F. 229, G. 484, H. 346, 348, I. 497, 498, P. 508 (1), Sc. 26, 31, E. 44, M. & P. 134.

(6.) H. 363, I. 504, P. 508 (5), E. 42, M. & P. 137.

(7.) B. 18, F. 227, I. 504, E. 42.

(8.) B. 35, F. 245, G. 490-492, H. 383, I. 516-518, P. 506, 508 (9), E. 49, 60.

(9.) B. 24, F. 234, G. 497, 498, 503 diff., H. 372, I. 509, 591, E. 39.

(10.) G. (1872) 52, H. 430, I. M.M.C. 98, 99, Sc. 46, M. & P. 235, 236.

(11.)

(12.) B. 25, F. 235, G. 503, H. 360, P. 508 (11), Sc. 52, M. & P. 139.

(13.) I. M.M.C. 110, M.S.A., 1894, § 419.

(14.) B. 31, F. 241, H. 362, I. M.M.C. 111, P. 508 (4), (7), Sc. 43, E. 56.

(15.) B. 36, F. 246, G. 490, 526, H. 383, 384, I. 516, E. 61.

(16.) G. 492, M. & P. 131-134.

613. A Commander who sails a ship on shares or thirds cannot do business on his own account, and, if he does, the profits arising belong to the other persons interested in the ship, and the losses are sustained by himself.

B. 29, 30, F. 239, 240, G. 514, H. 353, 390, I. 515, P. 520, Sc. 28, E. 54, M. & P. 122.

614. A Commander who has undertaken a voyage and does not carry out his undertaking, unless prevented by accident or insuperable difficulty, will indemnify all losses arising from that cause without prejudice to Criminal proceedings that may be applicable to the case.

B. 28. F. 238, G. 483, 521, H. 354, I. 514, P. 508 (4), Sc. 291, E. 53.

615. A Commander cannot without the consent of the owner appoint another person in his place, and if he does so he remains responsible for all the acts of his substitute, and subject to the liabilities detailed in the preceding Article, and both of them may be dismissed by the owner.

G. 483, H. 356, I. M.M.C. 108, P. 515, Sc. 30.

616. If the provisions or fuel of the ship are used up before reaching her port of destination, the Commander may, after taking counsel with his officers, take steps to put into the nearest port to obtain one or the other, but if there are persons on board who have provisions of their own he may compel them

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to give them up for the general use of all on board on payment of their value at once, or, at the latest, at the first port which they reach.

B. 39, F. 249, H. 374, I. 508, M.M.C. 94, 95, E. 64.

617. A Commander cannot borrow money on bottomry on the cargo, and if he does so the contract will be of no effect.

Neither can he borrow for his private affairs on the ship except on that portion of which he is owner, and if there has been no previous bottomry loan on the whole ship, and no other charge on the vessel is in existence. If he desires to borrow he must, of necessity, state what his share in the vessel is.

In case of a breach of this Article, the money borrowed with interest and costs will be chargeable on the Commander's private property, and the owner may dismiss him.

B. 24, 26, F. 284, 321, G. 497, 504, 507-510, H. 372 diff., 375, I. 509, 591, P. 511, Sc. 175, E. 49 and Tit. X., M. & P. 155-158.

618. A Commander is civilly responsible to the ship-owner, and the latter to third parties who have contracted with him:—

(1.) For all damages that the ship or cargo sustain from his negligence, or want of skill; if there has been actual delict or default it will be settled by the Penal Code.

(2.) For pilferings and thefts committed by the crew, saving his right to recover over from the guilty persons.

(3.) For losses, fines, and forfeitures imposed for breaches of the Laws and Regulations of Customs, Police, Health, and Navigation.

(4.) For damages and injuries caused by brawls arising in the ship, or by offences committed by the crew in the service or defence of the same, unless he proves that he duly exercised his authority to the utmost limit to prevent and avoid them.

(5.) For those arising from the improper exercise of his functions, and default in fulfilling his duties as prescribed in Articles 610 and 612.

(6.) For those caused by taking a course different from the right one, or having, in the judgment of the officers

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of the ship in consultation, assisted by the shippers and supercargoes on board, deviated without good cause.

There is no exemption from this responsibility for any reason whatever.

(7.) For those which result from going into a port other than that to which he is bound, save in the cases and with the formalities of which Art. 612 treats.

(8.) For those which result from a neglect to observe the regulations for carrying lights and for manœuvring to avoid collisions.

B. 12, 21, F. 221, 230, G. 478, 479, 736, H. 345, 346, 349, 534, 535, I. 496, 497, P. 496, 497, Sc. 58, 59, E. 30, 35, 36, M. & P. 138, 154, 178.

619. A Commander is responsible for the cargo from the time of its delivery on the wharf or alongside in the loading port until its delivery on the shore or wharf of the port of discharge, unless it has been otherwise expressly agreed.

B. 13, F. 222, G. 481, 504, 607, 634, H. 345, 349-351, I. 498, P. 497, R. 341, 342, Sc. 142, E. 36, M. & P. 135, 136, 153, 321, 559.

620. A Commander will not be responsible for unavoidable accidents to ship or cargo, but he will always be liable for those occasioned by his own defaults, notwithstanding any agreement to the contrary.

Neither will a Commander be personally liable for debts incurred for repairing, refitting or provisioning the ship, which fall upon the owner unless he has pledged his personal credit or put his name to Bills of Exchange.

B. 21, F. 230, G. 496, 502, 503, 607, 608, H. 345, I. 496, P. 496, Sc. 142, 58, 59, E. 45, M. & P. 136, 88, 157, 155, 620.

621. A Commander who borrows money on the hull, engines, apparel, or furniture of the ship, or pledges or sells goods or provisions, except in the cases and with the formalities laid down in this Code, will be liable for the capital, with interest and costs, and will make good losses occasioned thereby.

If guilty of fraud in his accounts he will repay the amount of his fraud, and will remain subject to the dispositions of the Penal Code.

B. 26, F. 236, H. 375, I. 512, 591, 595, R. 383, Sc. 49, 176, 290, E. 161.

622. If whilst on a voyage a Commander receives notice of privateers or ships of war inimical to his flag, he must make

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for the nearest neutral port, and send a report to his owners or shippers, and wait for an opportunity of sailing under convoy or till the danger is past, or till he receives definite orders from the shipowner or shippers.

H. 364, Sc. 33, E. 97.

623. If he is attacked by a pirate (*corsareo*) and after having done what he could to avoid the meeting and to resist the surrender of articles belonging to the ship or cargo, they are taken by force, or he is compelled to deliver them, he will make a formal entry in his cargo book and prove it before the proper tribunal in the first port he arrives at.

On proof of compulsion (*fuerza mayor*) he will be held free from liability.

E. 45, 121, 122, M. & P. 136.

624. When a Commander meets with bad weather, or has reason to believe that the cargo has sustained damage or average, he shall enter a protest about it before the proper authority in the first port he arrives at within twenty-four hours of his arrival, and shall extend it within the same time immediately he reaches his port of destination, proceeding then to the proof of the facts without opening his hatches until they are verified. A Commander will proceed in the same way if, after the ship is lost, he is saved alone, or with a portion of his crew, in which case he will present himself before the nearest Authority and make a sworn report of the facts.

The Authority or the Consul, if abroad, will verify the facts stated, taking a sworn declaration from the members of the crew and passengers who are saved, and taking other measures to get at the facts of the case, considering the evidence deduced from entries in the official log and chief officer's book, and will deliver to the Commander the original entry stamped and with the pages numbered, with a note of the folios (number of words), which ought to be in red ink, to be produced to the Judge or Court at the port of destination.

The deposition of the Commander will be accepted as true if consistent with those of the crew and passengers; if it disagrees it will stand so far as it is in conformity with them, unless there is proof to the contrary.

B. 32, 36, 37, F. 242, 246, 247, G. 490-494, H. 383, 384, I. 516, M.M.C. Ch. XI., P. 506, Sc. 40, 41, 42.

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625. A Commander is free from personal responsibility when, after reaching his port of destination, he has obtained the necessary permits from the Health officers and Customs, and complied with the other formalities that the Government Regulations require, and has delivered the cargo in full to the consignees, and, if the question concerns the ship, has delivered it with its apparel and freight to the shipowner.

If, through the absence of the consignee, or because no lawful holder of bill of lading appears, a Commander does not know to whom he ought lawfully to deliver the cargo, he must place it at the disposal of the proper competent Judge or Court or Authority to the end that it may be decided what is best to do for its warehousing, preservation, and watching.

B. 232, F. 435, G. 629, 648, H. 489, 495-497, 746, I. 557, P. 539, 560 Sc. 156, 157, E. 124.

Section III.

Ship's Officers and Crew.

626. To be a mate (*piloto*) it is necessary

(1.) To fulfil the conditions required by the Laws and Regulations relating to seamanship and navigation.

(2.) Not be under any incapacity as laid down by those Regulations for the performance of his duties.

I. M.M.C. 67, 68, Macl. 188.

The use of the word "Piloto" in Spanish and words very similar to it in many other foreign languages is a constant difficulty. The fact is that in former times it was frequently the case that the captain of the ship had little or no knowledge of navigation. He might be the owner and much interested in the trading adventure (see 609 *ante*), but he engaged a skilful navigator to sail the ship under his general directions. These navigators were called, both in England and elsewhere, Pilots, and the term was at all events till recently preserved in the Royal Navy, where the Navigating Officer was appointed as Master and Pilot of the ship. It will also be found to be so used in Falconer's "Shipwreck," in the well-known song beginning "Oh, *Pilot*, 'tis a fearful night;" and by Tennyson in one of his latest poems, "Crossing the Bar". The distinction between this officer and the person generally now called a Pilot in England is drawn by calling the latter a local Pilot, Lameneur, Loadsman, or some such title.

627. The mate, as second in command of the ship, will, until the shipowner makes other arrangements, take the place

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of the captain in case of his absence, sickness or death, and at such time will assume all his functions, duties and responsibilities.

G. 483 (1872), 53, H. 356, I. M.M.C. 108, Macl. 159.

628. The mate must be provided with charts of the seas in which he is going to sail, and with the usual tables and astronomical instruments necessary for the discharge of his duty, being responsible for accidents caused by his omission in this respect.

H. 397 (6), 406-409.

629. The mate will in particular keep and himself write up a book, paged and stamped on all its leaves, called the deck log-book (*Cuaderno de bitácora*), with a note at its commencement, signed by the proper authority, stating the number of pages it contains, and in it will day by day enter the distances run, courses steered, the variation of the compass, the leeway, the direction and force of the wind, the state of the weather and sea, the stores consumed, the latitude and longitude observed, the number of boilers in use, the pressure of steam, number of revolutions, and under the heading of incidents (*Acaccimientos*) the manœuvres executed, ships fallen in with, and all events and accidents which happen during the voyage.

G. 486, H. 359.

630. The mate and commander should agree on any change of course for the better navigation of the vessel. If the latter objects the mate will explain his reasons in the presence of the other deck officers; if, notwithstanding, the commander retains his own opinion, the mate will make a proper protest, signed by him and another of the officers in the official log, and will obey the commander, who will alone be responsible for the consequences of his opinion.

G. 485, H. 367.

631. The mate will be answerable for all damages caused to the ship and cargo by his negligence or want of skill, without prejudice to the Criminal liability which may exist if he is guilty of actual fault or default.

G. 736, H. 397 (12) (13), 405, 452, 535.

632. The duties of the boatswain (bos'un) (*contramaestre*) are as follows:—

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(1.) To look after the preservation of the hull and rigging of the ship, and take charge of the stores and implements included in his store account, notifying to the commander necessary repairs and the replacing of goods and implements which are worn out and expended.

(2.) To see that the cargo is properly trimmed, so that the ship may sail to the best advantage.

(3.) To keep order and discipline, and see to the proper discharge of duty by the crew, seeking proper orders and instructions from the commander, and giving him timely notice of any circumstances in which the intervention of his authority is necessary.

(4.) To point out to each seaman the work he has to do on board, in conformity with the orders he has received, and to see that it is done properly and fairly distributed.

(5.) To make out an inventory of the rigging and furniture of the ship if she is dismantled, unless the shipowner has made other arrangements.

The following are the regulations to be observed in respect to the engineers :—

(1.) To enable a person to ship as a naval engineer forming part of the crew of a merchant ship, it is necessary to fulfil the conditions required by the Laws and Regulations, and not be under any incapacity, as laid down by those Regulations, for the performance of his duties. Engineers are considered as officers of the ship, but exercise no command and cannot interfere except in matters which relate to the engines.

(2.) When there are two or more engineers carried on board a vessel, one of them is the chief engineer, and has under his orders the other engineers and all the engine-room hands ; he will also have under his charge the engine, spare pieces (of machinery), the instruments and tools connected with them, fuel, oil, and tallow, and whatever else there is on board in the engineer's department.

(3.) He will maintain the engines and boilers in a good

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state of preservation and cleanliness, and take proper steps to enable them at all times to work regularly, being responsible for accidents and damages caused by his negligence or want of skill to the engines, ship or cargo, without prejudice to the Criminal liability which may exist if it is proved to have been the result of his actual fault or default.

(4.) He must not make any alteration in the engine, nor proceed to remedy defects that he has noticed in it, nor alter its regular speed without the authority of the commander, to whom, if he disagrees with what is proposed, he will explain the matter suitably in the presence of the other engineers or officers, and if the commander still persists in his opposition, the chief engineer will make a proper protest, signed, in the engineer's log, and will obey the commander, who alone will be responsible for the consequences of his resolution.

(5.) He must report to the commander every accident that happens to the engine, and give him notice when he has to stop the engines for a time, or when any accident happens in his department of which immediate notice ought to be given to the commander, and he must frequently inform him of the consumption of fuel and oil stores.

(6.) He must keep a book or register called the "Engineer's Log" (*Cuaderno de máquinas*), in which he will note all matters concerning the working of the engines, as for example, the number of furnaces alight, the pressure of steam in the boilers and cylinders, the vacuum in the condenser, the temperatures, degree of saturation of the water in the boilers, the consumption of fuel and oil stores, and under the heading of particular circumstances (*Ocurrencias notables*) the damages and deteriorations which take place in the engines and boilers, the causes producing them, and measures taken to repair them; further, he will state, taking the facts from the ship's log, the force and character of the wind, the sail set, and progress of the ship.

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I. M.M.C. 66, 69, Sc. 80.

633. The boatswain will take command of the ship in case of necessity or the incapability of the captain and mate, assuming in such case the corresponding functions and liabilities.

I. M.M.C. 108.

634. A Commander can make up the crew of his ship of such numbers of men as seem fit to him, and, failing Spanish seamen, may ship foreigners domiciled in the country, unless their number exceeds one-fifth part of the crew. When in foreign ports a Commander cannot find a sufficient number of Spanish seamen, he may, with the consent of the Consul or Maritime Authorities, make up his crew with foreigners. Contracts entered into by a Commander with the members of his crew and others forming part of the ship's company, and those to which reference is made in Art. 612, must be in writing, entered in the Ship's Account Book without the intervention of a notary or clerk, signed by the contracting parties and viséd by the Maritime Authority if entered into in Spanish dominions, or by the Spanish Consul or Consular Agent if abroad, setting out all the duties that each undertakes, and all the rights he acquires, the said Authorities taking care that these duties and rights are clearly and decidedly defined, so as to leave no room for doubts and disputes. The Commander will read to the crew the Articles of this Code that concern them, making a note of the reading in the same document.

The book, if kept as laid down in Art. 612, and having no sign of alteration in its sheets, will be valid evidence in questions arising between the captain and crew on the contracts entered into between them, and as to the sums paid on account of the same.

Each member of the crew may require from the captain a copy signed by him, both of the contract itself and of the payments made under it as shown in the book.

B. 14, 47, F. 223, 250, G. 480, 495 (1872), 10-14, 39, H. 343, 394-398, I. 499, 521-523, M.M.C. 71-73, P. 498, 515, E. 37, 65, M. & P. 128, 727.

635. A seaman who is engaged for service in a ship cannot annul the contract nor refuse to perform it unless some legitimate cause has supervened.

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Neither can he transfer his services from one ship to another without the written permission of the Commander of the ship he is serving in. If, not having got such permission, a seaman who is engaged to one ship engages himself to another, the second contract is null, and the Commander of the first ship may either compel him to carry out the service in which he first engaged, or find a substitute at his expense. Further, he will forfeit the wages earned under his first employment for the benefit of the ship in which he first engaged.

A Commander who, when aware that a seaman is engaged to another vessel, makes a fresh contract without getting the permission mentioned in the preceding paragraph will be liable subsidiarily to the Commander of the vessel to which the seaman belonged, for any part of the indemnity mentioned in the said paragraph which the latter cannot satisfy.

G. (1872), 8, 15, 28, 29, H. 400, 401.

636. When the term for which a seaman is engaged is not agreed, he cannot be discharged until the end of the voyage out and home to the port where he shipped.

G. (1872), 36, H. 344, I. 525.

637. Neither can a Commander discharge a seaman during the term of his engagement except for just cause. The following are deemed such :—

(1.) Commission of an offence which is subversive of discipline on board the ship.

(2.) Repeated insubordination, breaches of discipline or duty.

(3.) Want of skill or repeated neglect in performance of his appointed duties.

(4.) Habitual drunkenness.

(5.) Any accident which incapacitates the seaman from doing the work with which he is entrusted, saving the provisions of Art. 644.

(6.) Desertion.

Nevertheless, a Commander may, before the commencement of the voyage and without giving any reason, refuse to receive a seaman who is engaged and may leave him ashore, in which case he must pay his wages as if he had done duty.

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This compensation will be charged on the whole adventure if the Commander has acted from motives of prudence and in the interest of the safety and prosecution of it, otherwise it will be charged against the Commander himself. When the voyage has commenced, during its continuance and until its termination, a Commander may not abandon any man either ashore or at sea, unless the seaman is charged with a crime, and he imprisons him and gives him over to the proper authority in the first port he touches at, in which case the captain must leave him behind.

G. (1872), 57-59, H. 344, 397 (7) (11), 436, 437, I. 542, M.M.C. 74, 75, P. 534, E. 85, 86.

638. If, after the crew are engaged, either before or after the ship goes to sea, the voyage is given up by the will of the owner or charterers, or if for such reason the ship is ordered on a different voyage from that for which the crew shipped, they will receive compensation for the rescission of the contract as the case may be, that is to say :—

(1.) If the abandonment of the voyage is decided on before the ship leaves port, each seaman will receive one month's pay over and above what he is entitled to according to his engagement for services rendered on board the ship prior to the abandonment.

(2.) If engaged for a fixed sum for the whole voyage (by the run) each will receive the proportion of the said sum that the said month and days bear to the probable length of the voyage, as estimated by experts, as laid down in the Code of Civil Procedure, and if the intended voyage was so short that its length is approximately a month, the compensation will be fixed at fifteen days, deducting in all cases advances.

(3.) If the voyage is given up after the vessel has sailed, the men paid by a lump sum for the voyage earn the whole of their pay as if the voyage was completed, and those paid by the month will receive a sum corresponding to the time they have been on board, and that which it would take them to get back to their port of final destination. The captain

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must, moreover, provide them, in whatever way paid, with passages back to the said port or to the ship's home port at their option.

(4.) If the owner or charterers of the ship decide on a voyage different from that agreed upon, and the crew do not accept the alteration, they are entitled to one-half of the compensation prescribed above (1), over and above what is due to them for the portions of months elapsed since their engagement.

If they accept the alteration, and the voyage, on account of its increased length or other reasons, gives cause for an increase of pay, it will be privately arranged, or in case of disagreement, by friendly arbitration. If the voyage is shortened by being to a nearer place there will not on that account be any reduction in the agreed pay.

If the abandonment or alteration of the voyage proceeds from the shippers or charterers, the owner retains his right to recover just compensation.

B. 48, F. 252, G. (1872), 57-67, H. 411, 412, 416, I. 529, P. 522, 523, Sc. 92, E. 67, 70, 71, M. & P. 138 (h).

639. If the abandonment of the voyage proceeds from good cause independent of the will of owner and shippers, and the ship has not sailed from port, the members of the crew have no other right than that of receiving the wages earned up to the day of the abandonment.

B. 49, F. 253, G. (1872), 56, H. 413, 414, I. 530, P. 524, 525, Sc. 91, E, 68, 69.

640. "Good causes" for the abandonment of the voyage are:—

(1.) Declaration of war or interdiction of trade with the Power to whose territory the ship is bound.

(2.) Blockade of the port of destination, or a pestilence breaking out there after the agreement is made.

(3.) Prohibition to discharge in the said port the goods composing the cargo of the ship.

(4.) The arrest or embargo of the ship by order of the Government, or other cause independent of the will of the owner.

(5.) The unseaworthiness of the ship.

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G. (1872), 56, H. 413, 414, I. 530, P. 524, 545, Sc. 91, E. 45, 69.

641. If, after the commencement of the voyage, any of the first three causes mentioned in the last Article happens, the seamen will be paid in the port which the captain thinks fit to put into for the benefit of ship and cargo, according to the time they have served on board; but if the ship has to prosecute her voyage, the commander and crew can mutually demand the fulfilment of the contract.

In case the fourth happens, half-pay will continue to be paid to the crew if engaged by the month; but if the detention exceeds three months the employment is deemed at an end, the crew receiving the sums they would have received according to the contract on the termination of the voyage, and if the engagement is for a lump sum for the voyage, it must be paid according to the terms of the contract.

In the fifth case the crew have no further right than to receive the wages earned; but if the unseaworthiness of the ship results from the negligence or want of skill of the captain, engineer, or mate, they will compensate the crew for losses sustained, always retaining any Criminal liability they may be under.

B. 50, 54, F. 254, 258, G. (1872), 56-67, H. 414, I. 531, P. 524, 525, E. 68, 68.

642. Where the crew are engaged on shares (sail on shares), the abandonment, delay or greater extension of the voyage confers no right beyond the proportional part in the compensation given to the adventure by the persons responsible for the matter.

B. 53, F. 257, G. (1872) 69, H. 416, I. 534, P. 527, E. 72.

643. If ship and cargo are a total loss by capture or shipwreck, all claims are deemed to be extinguished, whether on behalf of the crew to recover any wages or by the shipowner for the repayment of advances made.

If any part of ship or cargo, or of both, are saved, the crew who are paid by wages, including the commander, preserve their claim against the property salved and its proceeds, whether remains of the ship or payment of freights for cargo salved. But seamen who sail on shares in freight have no claim against salvage of the hull, but only against the portion of freight salved. If they have worked to recover the remains of the

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shipwrecked vessel, they will be awarded, out of the value of the salved property, a reward proportional to the efforts made and risks encountered to carry out the salvage.

B. 54, 56 diff., F. 258, 259, G. (1872) 56 diff., H. 418-421, I. 535, 536, M.M.C. 75, P. 528, 532, Sc. 91, E. 73-76.

644. A seaman who falls sick does not lose his right to wages during the voyage if the sickness is not the result of his own fault. In all cases the expenses of nursing and curing are at the charge of the ship, on terms of repayment.

If the illness proceeds from injuries sustained on duty or in defending the ship, the seaman is nursed and cured at the expense of the whole adventure, taking the expenses of nursing and medical treatment out of the freight in the first instance.

B. 57-59, F. 262-264, G. (1872) 48, 49, H. 423-428, I. 537, 538, P. 529, 530, E. 77-79, M. & P. 178 *n.* (o), 209, 221.

645. If a seaman dies during the voyage, wages due under his agreement and not received by him at the time of his decease go to his heirs, that is to say—

If he has died a natural death, and is paid by wages, there is payable the amount of his wages earned up to the date of his decease. If paid by the voyage, then if the seaman dies on the outward voyage the half, and if on the homeward voyage the whole of the stipulated sum.

And if he is paid on shares, and the death takes place after the voyage is commenced, the share pertaining to the seaman goes to his heirs, but if he dies before the ship sails, the heirs have no right to claim anything.

If the death is caused by defending the ship, the seaman is deemed to be alive, and on the conclusion of the voyage the whole of the wages, or the whole share of profits which correspond to it, goes to his heirs in the same way as to survivors of the same rating. In the same way a seaman captured whilst defending his ship is deemed to be present to take the same advantages as the rest of the crew, but if taken prisoner by reason of his own carelessness, or other cause having no relation to his duty, he will only receive his wages earned up to the date of his being taken prisoner.

B. 60, F. 265, G. (1872) 51, H. 431, I. 539, 540, P. 531, Sc. 93, E. 80, M. & P. 208, 221.

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646. The ship, with its engines, apparel, furniture, and freight, is liable for the pay earned by the crew engaged on regular wages or by the voyage, which has to be settled and paid between the end of one voyage and the beginning of another.

When a fresh voyage is commenced, debts of this class proceeding from a previous voyage lose their precedence.

B. 4 (7), 63, F. 191 (6), 271, G. (1872) 68, H. 451, 741, I. 673 (3), 675 (7), P. 578 (6), 582 (2), 583, E. 5 (6), 89, M. & P. 86, 241.

647. The officers and crew are deemed to be free from all engagements if they think fit, in the following cases:—

(1.) If before the voyage begins the captain alters it, or if a naval war breaks out with the nation to whose country the ship is bound.

(2.) If an epidemic malady breaks out and is officially declared to exist in the port of destination.

(3.) If there is a change in the ownership or captain of the ship.

G. (1872) 61 diff., H. 440, Sc. 82, 85, 88, E. 88, M. & P. 179.

648. By the "Ship's Company" (*dotacion*) of a ship is understood the assembly of all persons shipped, from the captain to the ship's boy, who are needed for its conduct, manœuvres and duties, and so there are comprehended in the Ship's Company, the deck hands, mates, engineers, firemen, and others not specified who perform duties on board, but not passengers or other persons that the ship carries.

B. 64, F. 272, G. 445 (1872), 3, I. 521, P. 516, M. & P. 162.

Section IV.

*Supercargoes.**

Art. 649. Supercargoes perform the functions on board which are conferred on them by the shipowner or shippers;

* Spain is apparently the only European country which has special legislation for this class of officers. A supercargo, however, is frequently carried when unusual or peculiar commercial transactions have to be conducted, or sometimes when a ship is chartered and her officers being in the service of her owner, the charterer desires to have a servant of his own bound to protect his interests. Rapid postal and telegraphic communication all over the world diminishes the need of the former class of super-

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they keep an account and state their reasons for what they do in a book,* which fulfils the conditions and functions of the captain's account book, whom they obey as commander of the ship.

The functions and liabilities of the captain cease when there is a supercargo, in respect of that portion of the business legally assigned to the latter, but remain in all affairs which are inseparable from his authority and position.

650. All the provisions contained in Book II., Tit. III., § 2, relative to the capacity, method of contracting, and liability of factors are applicable to supercargoes.

Book II., Tit. III., § 2, is a statement of the law of Agency in Spain: the agent must be *sui juris*, if he contracts in the name of his principal the principal only is bound, if in his own name on account of his principal both are bound, if he contracts within the scope of his business but on his own account, the profits go to his principal but he bears the losses himself.

651. Supercargoes may not, without special permission or agreement, do any business on their own account during the voyage, beyond the venture which is allowed them by the custom of the port for which the vessel sails, nor can they bring back on the homeward voyage more than the venture produces except by special permission of their principals.

Title III.

Contracts Peculiar to Maritime Commerce.

Section I.

(1.)

The Form and Effect of Charter Parties.

652. A charter party must be drawn up in duplicate in formal documents signed by the contracting parties, and when either of them does not know how to or for any reason cannot write, by two witnesses at his request.

cargoes, whilst the appointment of agents for the charterer wherever the ship goes renders the presence of the latter less important. The "purser," generally carried in large passenger steamers, has certain duties in respect of cargo analogous to those of a supercargo.

* See *ante*, Art. 612 (3).

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A charter party must, in addition to the conditions freely agreed upon by the parties, contain the following particulars:—

(1.) The description, name, and tonnage of the ship.

(2.) Her flag (nationality) and port of registry.

(3.) The names, surname and residence of the commander.

(4.) The names, surname and residence of the owner, if he makes the contract.

(5.) The names, surname and residence of the charterer, and if he declares that he acts as agent, then of the person on whose behalf he contracts.

(6.) The ports for loading and discharging.

(7.) The capacity or number of tons by weight or measure mutually agreed on to be loaded and carried, or if the charter is for the whole ship.

(8.) The freight payable, stating if it is a lump sum for the voyage, or a monthly rate, or by the space occupied, or by the weight or measure of the goods composing the cargo, or by whatever means agreed on.

(9.) The amount of hat money (gratuity) payable to the captain.

(10.) The days agreed on for loading and discharging.

(11.) The lay days and days on demurrage to be accounted for and the amount payable for each.

B., 67, F. 273, H. 454, 461, I. 547, P. 541, 542, Sc. 109, E. 90.
M. & P. 290-292, News. § 37.

653. If cargo is received without a charter party being signed, the contract is deemed, so far as the cargo is concerned, to be that contained in the Bill of Lading alone, to ascertain the rights and duties of the shipowner, captain and shipper.

654. Charter parties made by a broker who certifies the authenticity of the signatures of the contracting parties made in his presence, can be given in evidence, and if there is a discrepancy between them, that one shall be preferred which agrees with the one kept by the broker in his office, if this last is drawn up in accordance with law.

Similarly, charter parties not made by a broker will be evidence whenever the contracting parties acknowledge the signatures to them to be theirs.

Where no broker has negotiated the charter party and the

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signatures are not acknowledged, doubts will be decided by the Bills of Lading, or failing them, by such evidence as the parties can produce.

655. Charter parties entered into by a captain in the absence of the owner will be of full force and effect even when entered into in contravention of the orders and instructions of the owner or charterer, but these persons preserve their right of action against the captain for the repayment of any loss they may sustain.

G. 496, E. 47.

M. & P. 155, News. § 37.

656. If the charter party is silent as to the time in which the loading and discharge are to take place, they will follow the custom of the ports where the work is done. When the time agreed on, or that which is in accordance with the custom, has elapsed, and there is no expressed provision in the charter party fixing the rate of demurrage, the captain retains his right to demand it for the lay days and days on demurrage which have elapsed in loading and discharging.

F. 274, G. 569, 597, H. 457, 458, I. 549, P. 545 diff., Sc. 118-120, E. 91.

M. & P. 405, News. §§ 40, 42, 63.

657. If the vessel becomes unseaworthy in the course of the voyage, the captain must freight another which is seaworthy at his own expense, to take the cargo and carry it to its destination. He is bound in order to do this to search for such a vessel, not only in his port of distress, but in those in the neighbourhood, within a distance of 150 kilometres (*nearly 100 miles*).

If the captain negligently or fraudulently fails to provide a vessel to carry the cargo to its destination, the shippers, after a formal demand on the captain to obtain freight within a stated time, may engage freight with the sanction of the judicial authority to at once carry out the contract entered into.

The same authority will compel the captain by summary process (*por la via de apremio*) to bear the expenses and liabilities arising out of the affreightment entered into by the shippers.

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If the captain, after using due diligence, cannot get a vessel to freight, he will place the cargo on deposit to the order of the shippers, to whom he will render an account of what has happened at the earliest opportunity. Freight is payable in such a case *pro rata* on the distance actually accomplished by the vessel, without any other indemnity.

B. 94, F. 296, G. 634, H. 478, I. 570, E. 115.
M. & P. 368, 321, News. §§ 64, 78.

658. Freight is due in accordance with the conditions agreed on in the contract, and if not expressed, or ambiguous, the following rules are to be observed :—

(1.) Where the ship is hired by the month or day, the freight runs from the day on which the vessel is ready to load.

(2.) Where the hiring is for a specified time the freight runs from the same date.

(3.) If freight is payable for weight, the payment is for the gross weight, including packages, such as barrels or any other receptacle containing cargo.

B. 69, 70 diff., F. 275 diff., G. 621, 623, H. 463, I. 550, P. 546, 558, E. 93.

659. Freight is due for goods sold by the captain for necessaries for the ship, machinery, or apparel, or for other pressing and urgent wants. The price of such goods will be fixed at the end of the voyage, as follows :—

(1.) If the ship arrives in safety at her destination, the captain will account for them at the price similar goods fetch at that place.

(2). If the ship is lost, then at the price for which they were in fact sold. Similarly freight is earned in full if the ship reaches her destination, and *pro rata* for the distance accomplished if she is lost.

B. 93, F. 298, G. 507, 509, 613, H. 373, 480, I. 575, P. 555 (2), E. 117.
M. & P. 581, 582, News. 64, 120.

660. Goods that are jettisoned for advantage of the whole adventure do not pay freight, but the value of the freight will be considered as General Average and its amount calculated *pro rata* on the distance accomplished when the jettison took place.

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B. 96 diff., F. 301 diff., G. 717 diff., H. 481, I. 576, P. 555, Sc. 151, E. 120.

M. & P. 427 (*n.*).

661. No more do goods lost by shipwreck or stranding pay freight, nor those captured by pirates or enemies. If freight has been paid in advance, it will be repaid, unless otherwise agreed.

B. 97, F. 302, G. 632, H. 482, I. 577, Sc. 151, E. 121.

M. & P. 362, 376.

662. If the ship or goods are rescued, or articles are saved from a wreck, freight is payable *pro rata* to the ship carrying the cargo, and if it is repaired and reaches the port of destination, full freight is due, without prejudice to what may be due in respect of damage.

B. 97, F. 303, 304, G. 632, H. 483, I. 578, E. 122.

M. & P. 377.

663. Goods which have deteriorated or diminished in quantity from their own inherent vice, or bad condition of the packages, or accident, pay the full freight agreed upon in the contract of affreightment.

B. 76, 77, F. 310, G. 607, 621, 658, I. 581, P. 555 (1), Sc. 151, E. 131.

M. & P. 378.

664. A natural increase in the weight or measure of goods laden on board a vessel, inures to the profit of the proprietor and pays freight in accordance with the contract of affreightment for similar goods.

G. 621.

Buckle v. *Knoop*, L.R. 2, Ex. 125, 333.

665. There is a special lien on the cargo for the payment of freight, expenses, and dues relating to it, which are repayable by the shippers, and for its share of General Average, but the captain must not delay the discharge on account of a doubt as to the fulfilment of this duty.

If there is good reason for distrust, a Judge or Court, at the request of the captain, may allow the goods to be placed on deposit until all payments are settled.

B. 79, 80, 81, F. 306, 307, G. 615, 616, 624-628, H. 487, I. 580, 671, P. 561, 530, E. 98, 125.

M. & P. 389, 391, M.S.A., 1862, p. 67.

666. A Commander may require the sale of a portion of the cargo sufficient to pay the freight, expenses, and averages

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pertaining to it, reserving the right of demanding the residue payable on such account if the sum realised by the sale proves insufficient to cover the debt.

B. 81, G. 626, I. 672, P. 575, E. 125.

M.S.A., 497, 498.

667. There is a special lien on the cargo for freight and charges for twenty days, counting from the time of its being placed on deposit. During this term a sale may be demanded, notwithstanding that there are other creditors, and that the shipper or consignee is insolvent.

This right cannot, however, be exercised against the goods after they have been delivered to a third party without fraud on his part and for good consideration (*titulo oneroso*).

B. 81, F. 307, 280, G. 624, H. 490, I. 672, P. 581, E. 126.

668. If the consignee cannot be found, or if he refuses to receive the cargo, the Judge or the Court must, on the demand of the captain, order the goods to be placed on deposit, and arrange a sale of what is necessary for the payment of the freight and other charges upon it.

Similarly, a sale will take place when the goods on deposit are in danger of deterioration, or if, whether on account of their inherent quality, or from other causes, the expenses of keeping them are out of proportion to their value.

B. 78, F. 305, G. 624, 629, H. 487, 489, I. 579, P. 559, Sc. 156, 157, E. 124, M.S.A., 493.

(2.)

The Rights and Duties of the Person Letting a Ship.

669. The letter of the ship (*fletante*) or the captain must be exact in contracts of affreightment as to the capacity of the vessel or the tonnage stated in the Register; no greater difference than 2 per cent. between what is stated and the fact will be allowed.

If the letter or captain engage more cargo than the vessel can carry, having regard to her tonnage, they will compensate the shippers with whom they cannot fulfil the contract for the damages which they have sustained in consequence, as follows :—

If the freight is payable for the whole ship by one shipper

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only, and there is mistake or fraud as to its capacity, and the shipper does not elect to rescind the contract when he has a right to do so, the freight will be diminished *pro rata* to the cargo that the vessel can carry; the letter of the ship must, moreover, indemnify the charterer for all damages caused by the error.

If, on the other hand, there are several contracts of affreightment, and from an error as to the capacity of the vessel, she cannot load all the cargo engaged, and none of the shippers elects to rescind his contract, the preference will be given to those whose goods are already shipped and stowed in the vessel, and the rest will take priority according to the dates of their contracts.

If no priority can be shown, they can each load, if they like, a portion of the weight or measurement, in proportion to the amount contracted for, and the letter of the ship will be liable to make good to them all damages and losses.

B. 73, 74, F. 288, 289, 290, H. 459, I. 562, P. 542 (5, § 2), R. 340, E. 109; M. & P. 298; *Mackill* v. *Wright*, 14 App. Cas. 106; News. § 41.

670. If, after receiving a part of the cargo, the letter of the ship cannot secure at the agreed rate of freight more than at the least three-fifths of what the ship can carry, he may substitute for the voyage another vessel, surveyed and declared to be fit for the said voyage, on bearing the expenses of transhipment, and any increase there may be in the amount of the freight. If no such substitution is possible, he must proceed with the voyage as agreed, and if the time is not agreed upon, then 15 days from the commencement of the loading, unless otherwise settled.

If the owner of the part cargo loaded procures cargo at the same rate and on the same conditions as that which he has shipped, neither the letter of the ship nor the captain can refuse to accept the remainder of the cargo, and if they resist the shipper has a right to demand that the vessel shall go to sea with the cargo actually on board.

B. 75 diff., G. 566, I. 563. Sc. 113.

671. When three-fifths of a full cargo is loaded, the letter of the ship cannot, without the consent of the freighters or shippers, substitute another vessel for that named in the

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contract, under pain of rendering himself liable for all damage and loss which may happen during the voyage to the cargo of those who have not consented to the substitution.

B. 75, G. 566, Sc. 113.

672. When the whole ship is let, the captain cannot, without the consent of the freighter, take cargo from another person; and if he do so, the freighter can compel him to discharge it, and indemnify him for loss he has thereby sustained.

B. 72, F. 287, G. 566, 589, I. 563, P. 552, E. 105, News. § 42.

673. All loss that a freighter sustains from the voluntary delay of a commander in commencing the voyage is chargeable to the letter of the ship, according to the rules prescribed, when the commander has been required by a notary or by legal process to put to sea in suitable weather.

B. 83, F. 295, H. 470, 475, 476, I. 569.

M. & P. 318, News. § 42.

674. If a freighter puts on board the vessel more cargo than agreed for, the excess may be admitted at the rate of freight stipulated for in the contract, provided it can be properly stowed without damage to other shippers; but if it cannot be properly stowed, the captain ought to refuse to take it, or discharge it at the cost of its owner.

Similarly, a captain may, before sailing, land goods which have been shipped secretly, or may carry them if he can stow them properly, requiring as freight for them the highest rate agreed upon for that voyage.

B. 66, 75, 88, F. 288, 292, G. 564, 565, H. 469, 477, I. 564, 566, P. 553, E. 108, 115.

M. & P. 315, News. § 41.

675. When a vessel is chartered to receive cargo in another port, the captain will report himself to the consignee named in his contract; and if he does not supply cargo, he will give notice to the charterer and await his instructions whilst the lay days, agreed on, or such as are allowed by the custom of the port, if there is no special agreement to the contrary, are running.

If the captain gets no answer within this limited period, he will do his best to engage freight, and if he does not succeed prior to the termination of the lay days and days on demurrage,

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he will enter a protest and return to the port from which he was chartered.

The charterer will pay the whole freight, deducting what has been paid for cargo shipped on account of third parties on the outward and homeward voyages.

The same rule will be observed when a ship chartered for an outward and homeward voyage is not supplied with a homeward cargo.

G. 568, 572, I. 568, Sc.

676. A captain loses his freight and indemnifies the shippers when they prove, even against a report of survey made in the port of departure, that the vessel was not seaworthy or in a fit condition to receive the cargo.

B. 95, F. 297, G. 560, H. 479, I. 571, P. 557, E. 116; M. & P. 311, News. § 61.

677. The contract of affreightment remains in force if, whilst the captain is without instructions from the shipper, a declaration of war or of blockade should be made during the voyage. In such a case the captain must make for the nearest neutral and safe port, and await orders from the shipper, and the expenses and wages earned during the detention will be settled as General Average.

If the shipper decides to have the cargo discharged in the port of refuge, the voyage freight is earned in full.

B. 89, 92, F. 299, G. 637, H. 502-506, I. 572, P. 549, E. 118; M. & P. 324-333, News. § 46.

678. If, according to the decision of a Judge or Court, the time that is necessary for receiving orders from the shipper has elapsed, and the captain is still without instructions, he may warehouse his cargo, making the payment of freight and expenses during the delay a charge upon it, which will be satisfied out of the proceeds of the first portion that is sold.

P. 580.

(3.)

The Duties of the Shipper.

ART. 679. A charterer of a whole ship may sub-charter wholly or partially for the periods that he pleases, and the captain cannot refuse to accept the cargo tendered by the

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sub-charterers, provided always that the terms of the original charter are observed, and that the whole chartered freight is paid to the person letting the ship, even if the ship is not fully laden, having regard however to the provisions of the next article.

B. 72, G. 606, I. 563, P. 552, R. 356, Sc. 112.

M. & P. 393, Macl. 331.

680. A charterer who does not load the whole of the cargo that he has contracted to ship, will pay freight on what he ought to have loaded, unless the captain has taken other goods to complete the cargo, in which case the difference in freight, if any, will be carried to the charterer's account.

B. 72, 75, F. 287, 288, G. 579, 580, 589, I. 564, P. 552, 553 (1), R. 354, Sc. 122, E. 105.

News. 73, 75, M. & P. 298, Macl. 348, *Morris* v. *Levison*, 1 C.P.D. 155.

681. If a shipper loads goods that are of a different description from those he declared at the time of entering into the charter party, without the knowledge of the person letting the ship or the captain, and in consequence thereof the person letting the ship or other shippers are prejudiced by confiscation, embargo, detention, or other cause, the person causing the loss is liable to make complete compensation out of his cargo and other property to all who have sustained damage.

B. 88, G. 563, 564, H. 477, R. 357, 358, Sc. 115.

News. 73, M. & P. 134, Macl. 388, 415.

682. If the goods are shipped for the purposes of an illicit trade, and are put on board with the knowledge of the person letting the ship or the captain, these latter will be, jointly with the owner of the goods, responsible for all loss which may arise from such shipment to other shippers, and, even if they have so agreed, they cannot recover from the shipper (of the illegal goods) any compensation for loss that the ship sustains.

B. 88, Sc. 115.

M. & P. 134.

683. If the vessel puts into a port in distress, for repairs to the hull, machinery, or apparel of the ship, the shippers must wait till the vessel is repaired, but they may discharge the cargo at their own expense if they think fit.

If the shippers, a Court of Law, a Consul, or a proper

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authority in a foreign country, think fit to have a cargo liable to deterioration discharged for its own benefit, the expenses of discharging and loading will be at the expense of the shippers.

B. 85, 86, 89, 94, F. 277, 278, 296, G. 636, 640, H. 478, I. 570, P. 556, R. 345, Sc. 165, E. 115.
News. 75, 78, M. & P. 154, 368, Macl. 399.

684. If a shipper, when none of the catastrophes referred to in the preceding article has occurred, seeks to discharge his goods before their arrival at their port of destination, he will pay the full freight, the expenses of putting into port at his request, and the damages and losses, if any, occasioned to other shippers.

B. 89, F. 293, G. 583, I. 567, P. 554, E. 112, Sc. 163.

685. In a general ship, any one of the shippers may unload his goods before the voyage has begun on payment of half freight, and the expense of stowing and unstowing, and any other loss caused to the other shippers.

B. 87, F. 291, G. 581, 582, 590, H. 473, I. 564, Sc. 129, E. 111 diff., Macl. 418.

686. Upon the discharge and delivery of the cargo to the consignee, he must at once pay the captain the agreed freight, and all other charges for which the said cargo is liable.

The gratuity to the captain (hat money) must be paid in the same proportion and at the same time as the freight, taking into account, in regulating its amount, all alterations and reductions to which it is subject.

B. 76, G. 615, 616, H. 485, 487, R. 389, Sc. 154, E. 103.
News. 76, M. & P. 359, 382-387, Macl. 434.

687. Charterers and shippers may not abandon goods which are damaged by their inherent vice or accident for the payment of freight and other charges.

They may, however, if the shipment consists of liquids which have leaked, abandon them, if no more than a quarter of the contents remains.

B. 77, F. 310, G. 617, H. 497, I. 581, P. 562, Sc. 152, E. 131.
M. & P. 378, Macl. 438.

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(4.)

The Total or Partial Rescission of a Charter Party.

688. A charter party may be rescinded on the demand of the shipper:—

(1.) If he abandons the adventure before loading the cargo, on payment of half freight.

(2.) If the capacity of the vessel does not conform with that stated in the certificate of registry, or if there is a mistake as to the national flag under which she sails.

(3.) If the vessel is not put at the disposal of the charterer at the time and place agreed.

(4.) If the vessel, after putting to sea, puts back to her port of sailing from danger of pirates, enemies, or adverse winds, and the shippers agree to discharge her.

In (2) and (3) the person letting the ship must indemnify the charterer for all loss he may sustain.

In (4) the person letting the ship retains his right to the whole freight for the outward voyage.

If the freight is payable by the month, the charterer will pay one full month if the voyage was to a port in the same sea, and two if to one in another sea.

From one port to another of the Peninsula and adjacent islands not more than one month will be payable.

(5.) If the ship puts into a port in the course of the voyage for necessary repairs, and the shippers prefer to dispose of the goods there.

When the delay does not exceed thirty days, the shippers will pay the full outward freight.

If the delay exceeds thirty days, they will only pay freight *pro rata itineris peracta.*

B. 73, 74, 91, 94, F. 288-290, 299, 296, G. 581, H. 467, 459, 478, I. 562, 564, 570, P. 542 (5), 551, 553, Sc. 111, 126, E. 106, 109.

News. 79, M. & P. 322.

689. A charter party may be rescinded on the demand of the person letting the ship:—

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(1.) If the shipper at the end of the demurrage days has no cargo on the quay.

In this case the charterer must pay half freight, as well as for the lay days and days on demurrage.

(2.) If the shipowner sells the ship before the charterer has commenced to load, and the purchaser loads on his own account.

In this case the shipowner will indemnify the charterer for losses he may sustain.

If the purchaser does not load on his own account the charter party holds good, and the vendor indemnifies the purchaser if he did not give him notice of the charter party at the time the sale was agreed on.

B. 75, F. 288, G. 577, 586, H. 464, 467, I. 564, Sc. 126, M. & P. 322.

690. A charter party is annulled, and all actions arising out of it are extinguished, if before the vessel sails from her port of departure any of the following events happen :—

(1.) A declaration of war or interdict on trade with the State to whose ports the vessel is bound.

(2.) A blockade of the port to which the vessel is bound, or an outbreak of plague subsequent to the contract.

(3.) A prohibition against the reception at such port of the goods of which the ship's cargo consists.

(4.) A detention for an undefined period, in consequence of an embargo put on the ship by order of the Government, or for other reason independent of the will of the shipowner.

(5.) The condemnation of the ship for unseaworthiness when no blame attaches to the captain or owner.

The discharge will be at the expense of the shipper.

B. 90, 84, F. 276, 300, G. 631, H. 499, 500, I. 551, P. 547, Sc. 159, 162, E. 94.

News. 74, M. & P. 324, Macl. 544, Macl. 560, 443.

691. If the ship cannot put to sea in consequence of the port of departure being closed, or for any other temporary cause, the charter party remains in force without either party having a right to claim damages.

The provisions and wages of the crew will be considered as General Average.

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During the detention the shipper may unload and reload the cargo at his own expense if he pleases, paying demurrage, however, if the reloading occasions delay after the cause of detention has ceased.

B. 84, 103, F. 277, 300, G. 639, H. 505, I. 552, Sc. 163, E. 95, 96, 119. News. 74, M. & P. 324, 223, Macl. 516.

692. If in the course of the voyage a declaration of war, closing of ports, or interdict on trade should happen, and the vessel puts into a port as arranged by the shipper for such an eventuality, the charter party is partially rescinded, and, unless otherwise agreed, the captain has no right to more than the outward freight.

B. 92, F. 299, G. 631, 636, I. 553, 572, P. 548, 549, Sc. 161, E. 97. News. 74, M. & P. 363, 325.

(5.)

*Passengers by Sea.**

693. If the amount of passage money is not agreed upon it will be summarily fixed by the Judge of the Court, on the advice of experts.

H. 521, E. 134.

694. If a passenger does not go on board at the time fixed, or leaves the vessel without permission from the captain when the vessel is ready to sail, the captain may proceed on the voyage and demand the full passage money.

B. 127, G. 667, H, 522, I. 583, P. 564, E. 136, Sc. 169.

695. The right to a passage, if given by name, cannot be transferred without the consent of the captain or agent.

B. 120, G. 665, H. 523, E. 135.

696. If a passenger dies before the commencement of the voyage, his legal representatives are not liable for more than half the passage money.

If provisions are included in the price of the passage, the Judge or Court after consulting experts, if thought fit, will decree the amount that ought to be credited to the ship.

If another passenger is taken in place of the deceased, nothing is due from the personal representatives.

B. 128, G. 668, H. 524, I. 583, P. 564 (1), Sc. 169, E. 137.

* See also as to third class passengers and emigrants, Royal Decree, 8th January, 1890, *post*.

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697. If, before the commencement of the voyage, there is a delay caused exclusively by the fault of the captain or owner, passengers have a right to a return of the passage money, and to be reimbursed for all losses and damages, but if the delay is caused by accident, *force majeure*, or any other reason independent of the captain or owner, the passengers are only entitled to the return of the passage money.

B. 129, 130, I. 583, P. 564 (2) (3), E. 137, Sc. 170.

M. & P. 693, Macl. 305.

698. Where the voyage is interrupted after its commencement, passengers only pay passage money in proportion to the distance accomplished, and have no right to be reimbursed for losses and damages, if the interruption is caused by accident or *force majeure*, but have a right to compensation if the interruption is exclusively caused by the captain. If the interruption arises from the unseaworthy condition of the ship, and the passenger chooses to wait till it is made seaworthy, no extra passage money can be charged, but the maintenance of the passenger will be at his own expense during the delay. In case of the sailing of the vessel being delayed, passengers are entitled to remain on board and be maintained at the expense of the vessel, unless the delay is owing to an accident or *force majeure*. If the delay exceeds ten days, passengers have a right to be repaid their passage money, if they wish it, and if it arises entirely from the fault of the captain or owner, they may besides claim to be reimbursed for losses and damages.

A ship which carries passengers only, must take them direct to their port or ports, whatever be their numbers, calling at the ports mentioned in the statement of the voyage.

B. 132, 133, 126, G. 672, H. 525, I. 584-586, P. 565, 567, 568, 569, 572, Sc. 170, E. 139.

News. 36, 57 & 58 Vict., c. 60, §§ 329, 331, Macl. 308, 307.

699. Where the contract is rescinded either before or after the commencement of the voyage, the captain has a right to recover for whatever he has supplied to the passengers.

H. 527.

700. In everything relating to the preservation of order and discipline on board, passengers must, without any exception, submit to the arrangements made by the captain.

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B. 123, G. 666, H. 528, E. 133, Sc. 171.
News. 34, M. & P. 694, Macl. 312.

701. The captain is not obliged or allowed, for the convenience or business of passengers, to touch at or enter ports which cause the vessel to deviate from her voyage, nor to stop longer in those at which he has to call than is necessary for the business of the voyage.

H. 529, E. 148, P. 569.

702. Unless otherwise agreed, the maintenance of passengers during the voyage is deemed to be included in the passage-money, but if they victual themselves, the captain is bound in case of necessity to supply them with needful provisions at a reasonable price.

B. 121, H. 530 diff., I. 588, P. 573, E. 142 diff.

703. A passenger will be considered as a shipper in respect to the effects he brings on board, and the captain will not be responsible for those which he keeps in his own custody and control, unless they sustain damage from the act of the captain or crew.

B. 122, G. 673, 674, H. 532, I. 589, Sc. 172, E. 144, 145.
News. 35, M. & P. 695.

704. The captain, in order to secure payment of the passage-money and maintenance, may retain the effects of the passenger, and in case of their being sold, will be preferred to other creditors, treating the case similarly to that of the collection of freight.

B. 124, G. 675, H. 533, Sc. 173, E. 147.
News. 34, M. & P. 695, *Wolf* v. *Summers*, 2 Camp. 631.

705. If a passenger dies in the course of a voyage, the captain is authorised to take what steps may be necessary with regard to the corpse, and must carefully guard the papers and effects on board belonging to the passenger, following the rules laid down in § 10 of Art. 612, with regard to members of the crew.

B. 125, G. 676, H. 531, E. 146.

(6.)

Bills of Lading.

706. The captain and shipper of goods in a vessel are bound to draw up a Bill of Lading in which are stated:—

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(1.) The name, port of registry, and tonnage of the ship.
(2.) The name and domicile of the captain.
(3.) The ports of loading and discharge.
(4.) The name of the shipper.
(5.) The name of the consignee, if the Bill of Lading be to a special person.
(6.) The quantity, quality, and number of parcels, and the marks on the goods.
(7.) The freight and gratuity to captain agreed on.

A Bill of Lading may be to bearer or order, or to a person named, and must be signed within twenty-four hours of the receipt of the cargo on board the ship, failing which the shipper may demand the redelivery of the cargo at the captain's expense, and in all cases the damages and losses occasioned.

B. 40, F. 281, G. 644, 645, H. 507, 508, I. 555, P. 538, Sc. 132, 134, E. 99.

News. 48, 49, 50, M. & P. 338.

707. The original Bill of Lading must be fourfold (*i.e.*, there must be four identical specimens of it), and the captain or shipper must sign each of them. The shipper keeps one and forwards another to the consignee. The captain holds two, one for himself and one for the shipowner.

There may be as many copies of the Bill of Lading as parties concerned think necessary, but when they are to "order" or "bearer" the destination must be stated in all the copies, whether the four above-mentioned or the later ones, pointing out whether it is for the ship's husband, captain, shipper, or consignee; if the copy intended for the last-mentioned person is in duplicate, it is necessary to mention that fact on the duplicate, and also to state that the duplicate will not be valid except in default of the original.

B. 41, F. 282, G. 644, H. 509, 510, I. 555, 556, P. 538, Sc. 133, 134, E. 100, News. 53, M. and P. 338, 339, Macl. 366.

708. A Bill of Lading "to bearer," sent to the consignee, will be transferable by simple delivery of the document, and if "to order," by endorsement.

In both cases the transferee of the Bill of Lading acquires all rights and actions of the former holder or endorser over all goods to which it refers.

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B. 44, G. 646, H. 508, I. 555, Sc. 134.
News. 50, 51, 52, M. & P. 344, Macl. 372.

709. A Bill of Lading drawn up as here directed will be conclusive as between all parties concerned in the cargo, and between them and their insurers, saving however to the last-mentioned a right to contradict it by evidence.

B. 42, F. 283, G. 653, H. 512, I. 558, P. 540, Sc. 144, E. 101.
M. & P. 343.

710. If there is a discrepancy between the Bills of Lading, and none of them show marks of alteration or erasure, those signed by the captain or owner and in the possession of the shipper or consignee, are believed in favour of the latter, as against the captain and owner, and those signed by the shipper as against the shipper and consignee and in favour of the captain or owner.

B. 43, F. 284, H. 515 diff., I. 559, R. 337, E. 102.
M. & P. 350.

711. A lawful holder of a Bill of Lading ought to present it to the captain of the ship before the discharge, and is liable for the consequences of omitting to do so, and, if in consequence the cargo is landed and warehoused, will be answerable for the expenses of storage and all others that are caused thereby.

B. 78, Sc. 156.
News. 76, M. & P. 322.

712. A captain cannot change the destination of the goods without authority; if such an alteration is allowed at the request of the shipper, he must first get back the Bills of Lading that have been forwarded, under penalty of answering for the cargo to the legal holder of them.

M. & P. 138, Sc. 141.

713. If before delivery of the cargo a fresh Bill of Lading is demanded from the captain, on the ground that the former ones, which have not been presented, have miscarried, or for other just cause, he must give it, on getting bail to his satisfaction for the value of the cargo, but without any alteration in the consignment, and expressing in the fresh Bill all the particulars mentioned in Art. 707, where it is one of those Bills of Lading to which the Article refers, under penalty, in

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either case, of being liable for such cargo if, by his omission, it is wrongly delivered.

714. If, before the ship goes to sea, the captain dies or vacates his appointment by any accident, shippers have a right to require the new captain to ratify the former Bills of Lading, and he must do so, always provided that copies already issued be presented or returned, and that it appears from overhauling the cargo that it agrees with them. Expenses occurring by overhauling the cargo will be the shipowner's, without prejudice to his recovering them from the former captain if discharged for his own fault. If there is no such survey of cargo, it is considered that the new captain accepts the cargo as stated in the Bills of Lading which have been forwarded.

P. 544.

715. Bills of Lading give rise to a summary or immediate action (*acción somarísima ó de apremio*), if necessary, for the delivery of the cargo and payment of the freight, and charges arising from it.

F. 280.

716. If several persons present Bills of Lading "to bearer" or "to order" endorsed to them, claiming the same goods, the captain will give a preference to the one who presents the first Bill of Lading forwarded, except in case the holder of a later one can show that the former one has miscarried, and they are in the hands of different persons.

In this case, as also when second or later Bills of Lading alone, without such justification, are presented, the captain will call on the Judge or Tribunal to authorise the warehousing and subsequent delivery of the merchandise, under direction of the Court, to the persons entitled.

B. 44, G. 651, H. 515-518, I. 557, P. 539, Sc. 140, 165.

News. 53, 54, M. & P. 359.

717. The delivery of a Bill of Lading cancels all provisional receipts of prior date given by the captain or his officers in respect of parts of the cargo.

G. 644, Sc. 124.

News. 49, M. & P. 338, Macl. 366.

718. When the cargo is delivered, the Bills of Lading signed by the captain are returned to him, or, at all events, the copy

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against which he has delivered, with a receipt for the goods endorsed upon it.

Delay on the part of the consignee will render him liable for losses that the delay may cause to the captain.

B. 46, F. 285, G. 652, I. 560, R. 350, 359, Sc. 139, E. 103.

Section II.

Bottomry, or Loans on Maritime Risks.

719. That is deemed to be a loan on bottomry, or on maritime risk, in which, whatever the conditions may be, the repayment of the sum lent and the premium agreed on, depends upon the safe arrival in port of the articles on which it is made, or on the value they realise in case of misfortune.

B. 164, F. 325, 327, G. 680, H. 569, I. 599, Sc. 174, E. 149, News. 81, M. & P. 560, 571, Macl. 47, 137.

720. Bottomry Bonds may be made:—

(1.) By a notarial instrument.

(2.) By means of a bond signed by the parties and the broker employed.

(3.) By a simple contract.

In whichever of those ways the contract is made, it will be noted on the certificate of the ship's register, and entered duly on the Mercantile Register, without which debts of this description will not have with respect to other debts the precedence to which their description entitles them, although the contract will be binding between the parties.

Bonds entered into during the voyage are regulated by Articles 583 and 611, and are valid against third parties from the time of their execution, if they are inscribed in the Mercantile Register of the ship's home port within eight days after her arrival. If eight days elapse without the bond being inscribed in the Mercantile Register, bonds entered into during the voyage are of no effect against third parties until the day on which the inscription is made. With regard to the validity of bonds made according to (2), they must be in conformity with the broker's books; for those made according to (3), the signature must be proved.

Contracts that are not in writing give no right of action.

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F. 311, 312, H. 570, 571, I. 590, 591, E. 150-153, Sc. 177.
News. 81, 83, M. & P. 560, 567, Macl. 54, 58.

721. A Bottomry Bond must state :—

(1.) The description, name, and home port of the ship.
(2.) The name and surname of the captain and his domicile.
(3.) The names, surnames and domiciles of the lenders on bottomry.
(4.) The sum lent and the premium agreed on.
(5.) The place of repayment.
(6.) The articles pledged for repayment.
(7.) The voyage for which the risk is taken.

F. 311, G. 684, H. 570, I. 590, Sc. 177, E. 150.
News. 81, Macl. 54.

722. Bonds may be made "to order," in which case they are transferable by endorsement, and the transferee acquires all the rights and runs all the risks of the former holder.

B. 162, F. 313, G. 685, 687, H. 573, I. 592, Sc. 178, E. 154.
Macl. 56.

723. Loans on goods and merchandise may be made on an estimated value, to determine the sum to be lent.

724. Loans may be jointly or severally on :—

(1.) The hull of the ship.
(2.) The outfit.
(3.) The stores, provisions and fuel.
(4.) The engines, when the vessel is a steamship.
(5.) The cargo.

If upon the hull of the ship, the outfit, stores and other furniture, provisions, fuel, engines and freights earned on the bottomry voyage are deemed to be affected to the loan.

If upon the cargo, the whole of it is affected; and if upon a special part of the vessel or of the cargo, that alone which is specified is affected.

B. 157, F. 315, G. 681, H. 574, 575, I. 593, Sc. 175, E. 155.
M. & P. 563, 564.

725. There can be no loan on bottomry on the wages of the crew or on anticipated profits.

B. 158, F. 319, H. 577, 578, I. 593, 594, E, 158, 159.

726. If the lender shows that he was induced by the fraud of the borrower to advance more than the value of the article

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on which the loan was secured, the bottomry will be good only for the amount of the value ascertained by experts.

The balance of the capital will run at the legal rate of interest until repayment.

F. 316, H. 576, I. 594, E. 156.

727. If the whole of a loan for the purpose of loading a cargo is not used for this purpose, the balance is repayable before the vessel sails.

Similarly when the goods pledged are not loaded.

F. 324, 329, Sc. 186.

News. 83, M. & P. 567.

728. A loan effected by a captain in the port of residence of the owners, affects the captain's share only if the owners have not given him express authority or intervened in the operation by themselves or their authorised agents. If one or more of the owners, on being required to contribute their share for the repairs or provisioning of the ship, do not do so within twenty-four hours, their shares will be liable to be bottomried for their proportions.

Elsewhere than where the owners reside the captain may take up loans on bottomry in conformity with Articles 583 and 611.

B. 23, F. 234, 321, 322, G. 497, 681, H. 579, 580, I. 595, E. 161, 162.

News. 83.

729. If the articles on which the loan is made are never exposed to the risk, the contract is reduced to a simple loan, the borrower is bound to repay the money with legal interest if this is less than that agreed upon.

F. 325, H. 586, I. 497, Sc. 186, E. 170.

News. 82.

730. Loans made during the voyage take precedence of those made previously to it, and rank in the inverse order of their dates.

Loans for the last voyage take precedence over previous ones. Loans made in the same port of distress and for the same purposes are payable *pro rata*.

B. 159, F. 323, G. 771-773, H. 581, I. 675 (9) (13), Sc. 269, E. 163.

News. 84, M. & P. 576, Macl. 58.

731. Actions by a bottomry bond holder on cargo are barred by the total loss of the articles on which the loan is made, if

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arising from perils of the sea in the time and during the voyage named in the bond whilst the cargo is on board, but not if the loss arises from the inherent vice of the thing, or from the fault or improper conduct of the borrower, or from the barratry * of the captain, nor if occasioned by injuries sustained by the ship in consequence of her being employed in an illegal voyage, nor if it arises from the goods being carried in a different vessel from that named in the bond, unless the change was caused by *force majeure*.

The proof of loss rests on the borrower, as well as the existence in the vessel of the goods declared to the lender as the objects pledged.

B. 164, F. 325, 329, H. 588, I. 599, 600, E. 165, 166, Sc. 174.
News. 81, 82, Macl. 57.

732. Lenders on bottomry contribute to General Average attaching to the articles on which the bottomry loan is made, in proportion to their respective interests. In case of Particular Averages, unless otherwise agreed by the contracting parties, the lender on bottomry will contribute so far as his interest is concerned, if the average is not caused by the perils excepted in the preceding Articles.

B. 167 diff., F. 330, G. 691, H. 589, I. 603, Sc. 179, E. 171.

733. If the time of duration of the risk taken by the lender is not mentioned in the contract, it will run, for the ship, engines, apparel, and furniture, from the time the ship sails until she is anchored in the port of her destination, and for the cargo from the time it is placed on the quay or mole at the port of loading until discharged in that to which it is consigned.

F. 328, G. 688, H. 585, I. 601, E. 168, Sc. 181.

734. In case of shipwreck the sum payable on the loan is reduced to the amount of the proceeds of the property salved, less salvage charges.

If the loan be on the ship, or any part of it, freights earned on the voyage for which the loan was made are liable for its repayment as far as they go.

B. 165, F. 327, G. 681 diff., 691, H. 588, I. 599, E. 167.
M. & P. 572.

* See note to Art. 756 *post*.

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735. If there are both a loan on bottomry and an insurance on the same ship or cargo, the value of the proceeds of salvage, in case of shipwreck, will be divided between the lender on bottomry and insurer in proportion to the proper interests, reckoning for this purpose only the capital advanced by the lender, and without prejudice to preferential rights of other creditors as laid down in Art. 580.

F. 331, H. 610, I. 599, E. 172.

736. If there is delay in the repayment of capital and maritime premiums, the former alone bears legal interest.

B. 161 diff., I. 596 diff., Sc. 182.

News. 82, M. & P. 573.

Section III.

*Marine Insurance.**

(I.)

Form of the Contract.†

737. To render a contract of marine insurance valid it must be in writing, in a policy signed by the contracting parties.

The policy will be drawn up and executed in duplicate, each of the contracting parties keeping one.

F. 332, H. 256, I. 420, 604, P. 595, E. 174, Sc. 232.

News. 125, Arn. 231, 232.

738. A policy of insurance, in addition to the conditions† which only concern those interested, must contain the following particulars:—

(1.) The date of the contract, stating the hour at which it was agreed on.

(2.) The names, surnames, and addresses of the insurer and assured.

(3.) A declaration of the capacity in which the assured contracts, whether for his own account or on behalf of another person.

* The general law of Insurance is contained in Book II. Tit. VIII.

† By a decision of the Supreme Court in Spain it is settled that persons may put what terms they please in the contract and are bound by them, 28th Nov., 1884.

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In the latter case, the name, surname, and address of the person on whose behalf the insurance is made.

(4.) The name, port, flag, and description of the ship insured, or of that which carries the insured goods.

(5.) The name, surname, and residence of the captain.

(6.) The port or roadstead in which the insured goods are, or ought, to be shipped.

(7.) The port for which the ship has sailed or is to sail.

(8.) The ports or roadsteads in which the ship is to load and discharge, or at which she is to call for any reason.

(9.) The description and quality of the things insured.

(10.) The number of parcels or quantity of any sort of cargo, and the marks, if any.

(11.) The period when the risk commences and ends.

(12.) The sum assured.

(13.) The premium agreed on for the insurance and the place, time, and form of its payment.

(14.) The portion of the premium belonging to the outward and homeward voyages respectively, if the insurance is on a round voyage.

(15.) The obligation the insurer is under to pay for damage sustained by the property insured.

(16.) The place, time, and manner in which payment is to be made.

F. 332, H. 236, 592, I. 420, 605, P. 595, 596, E. 174.
M. & P. 444, Macl. 231, 233.

739. Contracts and Policies of Insurance authorised by Consular Agents in foreign ports, where the contracting parties or any of them are Spaniards, are of equal validity as if they had been verified by a broker.

740. Ship and cargo may be included in one and the same contract or policy, the value of each article being stated, and the amount insured on each distinguished, otherwise the insurance will be void.

So also, different premiums may be agreed on for each article insured.

Several insurers may underwrite the same policy.

B. 168, F. 334, 335, G. 782, 783, H. 593, I. 606, P. 597, E. 175-177.

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741. In insurances on goods, the special description of them and of the ship carrying them may be omitted when they are unknown to the assured.

If, in such a case, the ship sustains sea damage, the assured is bound to prove, not only the loss of the ship, but also that it sailed from its port of loading, that the goods lost were loaded on his account, and what was their value, before he can claim the insurance.

F. 337, H. 595, 596, E. 180.

742. Policies of Insurance may be drawn "to order" of the assured, in which case they may be endorsed (*i.e.*, the benefits of them may be transferred by endorsement).

Arn. 234.

(II.)

Things which may be Insured and their Valuation.

ART. 743. The following may be subjects of marine insurance:—

(1.) The hull of a ship in ballast or laden, in port or on a voyage.
(2.) The apparel.
(3.) The machinery, when it is a steam-vessel.
(4.) All the appurtenances and articles which make up the outfit.
(5.) Provisions and fuel.
(6.) Moneys lent on bottomry.
(7.) Freights to be earned and anticipated profits.
(8.) All trade goods exposed to the perils of navigation whose value can be fixed at a definite sum.

As to the insurance of mortgaged ships and of mortgage money, see Law of Mar. Mort., 1893, § 9 *post*.

B. 168, F. (1885) 334, G. 782, 783, H. 593, I. 606, P. 597.

Arn. 18-40. (8) Special provision for Insurance against risks of carriage by land is contained in Book II., Tit. VIII., Sec. IV.

744. The whole or a portion of the things mentioned in the preceding Article may be insured, jointly or separately, in time of peace or of war, for a voyage or for a period, for a single voyage or compound voyage, or upon good or bad news.

B. 168, F. 335, H. 594, I. 606, 609, P. 597, 598.

Arn. 18-40.

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745. If the policy states in general terms that the insurance is on ship, the engines, apparel, and appurtenances, and whatever else belongs to the vessel, are deemed to be included, but not the cargo, even though it belongs to the same owner.

In an ordinary insurance on "cargo," metals in specie or bullion, precious stones and munitions of war are not deemed to be included.

H. 593.

Arn. 20-21.

746. A shipper, or charterer of a ship, or the captain may insure freight, but they cannot insure advances received on account of freight, unless it has been specially agreed that if it be not earned in consequence of shipwreck or loss of cargo the sum received shall be repaid.

B. 168, F. 334.

Arn. 31, 34, 321, 60.

747. In an insurance on freight the amount to be earned must be stated, and must not exceed what appears upon the charter party.

G. 801, H. 616, 623, R. 1234.

Arn. 321.

748. An insurance of profits is regulated by the agreements of the contracting parties, but the policy must state:—

(1.) The specified amount at which the profit is fixed by the assured on safe arrival and sale of the cargo at its port of destination.

(2.) The obligation to reduce the insurance if the difference between price to be obtained on sale, after deducting freight and expenses, and the cost price is less than the sum assured.

B. 190, G. 805, 806, 797, H. 613-615.

Arn. 37, 74.

749. An insurer may reinsure with others the articles insured by him, in whole or in part, at the same or a different premium; as also the assured may insure the expenses of insurance and the risk he runs in case of the insolvency of the first insurer.

F. 342, G. 783, H. 271.

Arn. 103.

750. If the insurance is made by the captain or the owner

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of the things insured who is actually on board the ship carrying them, such persons must always, unless there is an express agreement to the contrary, retain 10 per cent. at their own risk.

B. 174, 175 diff., P. 599.

751. In an insurance on ship it is understood that the insurance only covers four-fifths of the total value, and that the assured takes the risk of the remaining one-fifth unless the contrary is expressly stated in the policy. In this case, and in the case of the preceding Article, the amount of money borrowed on bottomry must be deducted from the sum insured.

F. 347 (1885), G. 799 diff., H. 602 diff. See a Case under the Penal Code, 5 R.I.D.M. 222.

752. The underwriting of a policy establishes a presumption in law that the insurers admit as accurate the valuation of the things insured contained in it, except in case of fraud or intent to deceive.

If the valuation appears to be excessive, the following proceedings are to be taken.

If the exaggeration has arisen from mistake and not from the intention of the assured, the insurance will be reduced to its true value fixed by agreement of the parties, or by experts, and the insurer will repay the excess of premium received, retaining, however, half per cent. of such excess.

If the exaggeration is fraudulent on the part of the assured, and the insurer proves the fact, the insurance is void as far as concerns the assured, and the insurer keeps the premium, without prejudice to suitable criminal proceedings.

B. 169, 188, F. 336, 357, 358, G. 790, 797, 900, H. 253, 274, 275, 619-622, I. 428, 612, Sc. 234, 235, 238.

Arn. 296, 299, 332.

753. The exchange into the coin of the realm, when the policy has been made abroad, will be reckoned at the current rate at the time and place where the policy was signed.

B. 170, F. 338, I. 613.

754. If at the time the contract is entered into a valuation of the articles assured has not been made, it will be determined as follows:—

(1.) By the invoices of the goods.

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(2.) By the declaration of brokers or experts who will base their judgment on the price of the goods at the port of departure, and adding thereto the expenses of loading, freight and customs duty.

If the insurance be on goods to be brought back from a place where trade is only carried on by barter, the valuation will be made on that of the goods bartered at their port of departure with all expenses added thereto.

B. 171, 887, F. 338-340, G. 803, 888, H. 273, 621-623, Sc. 133.
Arn. 318.

(III.)

The Reciprocal Duties of the Assured and Insurer.

755. Insurers indemnify loss and damages sustained by the articles insured from any of the following causes :—

(1) Stranding or grounding either with or without breaking up, (2) Storms, (3) Shipwreck, (4) Accidental Collisions, (5) Change of voyage or vessel, (6) Jettison, (7) Fire or explosion, if occurring to goods whether on board or stored on shore, always provided they have been so stored by a competent authority for the purpose of repairing the ship, or for the benefit of the cargo, or fire from spontaneous combustion in the bunkers of steam-vessels, (8) Capture, (9) Piratical Seizure, (10) Declaration of War, (11) Embargo by order of Government, (12) Detention by order of a Foreign Power, (13) Reprisals, (14) All other accidents and perils of the sea. The contracting parties may stipulate for such exceptions as seem good to them, provided they are mentioned in the policy, without which requisite they have no effect.

B. 178-181 diff., F. 350, G. 824, H. 637, I. 615, 616, P. 604, Sc. 248.
(7) Book II. Tit. VIII. Sec. II. deals with the ordinary contract of fire insurance.
Arn. 744-756.

756. Insurers are not answerable for damages and losses sustained by the things insured from any of the following causes, even though not excluded by the terms of the policy :—

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(1.) A voluntary deviation in the voyage, or a change of ship, without the express consent of the insurers.

(2.) A voluntary separation from convoy when it has been stipulated that the ship should sail under its protection.

(3.) An extension of the voyage to a more distant port than that named in the policy.

(4.) Arrangements wilfully made contrary to the charter party or bill of lading, by order of the charterer, shippers, or freighters.

(5.) Barratry of the master, unless it is a risk insured against.

(6.) Leakage, waste, and loss arising from the nature of the things insured.

(7.) The want of the papers prescribed by this Code, by Orders and Regulations of the Marine or of Navigation, or any other species of omission on the part of the captain in disobedience to administrative regulation, unless barratry of the master is included in risk taken by the insurer. In any case the insurers have earned the premium as soon as they have commenced to run the risk.

B. 182, 184 diff., 185, F. 351-353, 364, G. 825, H. 638-643, I. 615, 617, 618, 523, P. 604, 608, 612, 614, Sc. 248, 255.

Arn. 450, 620, 772, 13, 626.

(5) and (7) The word barratry seems to have a larger meaning in France and other continental countries than it has in England, and to extend to gross negligence. See 10 R.I.D.M. 207, 427; 7 R.I.D.M. 319, 410. In England "the term barratry includes every wrongful act wilfully committed by the Master or Crew with intent to defraud the owner, or, as the case may be, the charterer," Mar. Ins. Bill, 1896, Sc. I.

757. In case of policies on cargo for a round voyage, if the assured does not get any return cargo or less than two-thirds, the premium on the return voyage will be reduced in proportion to the cargo carried, with an allowance to the insurer of half per cent. on the deficiency. Nevertheless, where the outward cargo is lost, the premium is not reduced unless in virtue of a special agreement modifying the terms of this Article.

B. 186, F. 356, I. 620, P. 609.

Arn. 1104.

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758. If the cargo is insured by several insurers in distinct parts, but without special definition of the objects insured, the indemnity will be paid in case of loss or damage by all the insurers *pro rata* on the quantity insured by each.

F. 360, G. 791, H. 277 diff., I. 608.

Arn. 328.

759. If several ships are named as carriers of the insured goods, but the amount shipped in each is not stated, the assured may divide the shipments as may be most convenient, or place them all in one vessel without affecting the liability of the insurer. But if the quantity shipped in each vessel is stated, and the shipments are different from those stated, the insurer incurs no liability beyond that he has contracted for in respect of each vessel. Nevertheless, he will receive ½ per cent. on the value of that which has been shipped over and above the agreed quantity.

If one of the vessels gets none of the cargo, the policy is null as regards that vessel, making the allowance above-mentioned of ½ per cent. on the excess shipped in the other vessels.

B. 194, F. 361, G. 820, 821, H. 652, I. 621, P. 610.

760. If, in consequence of the unseaworthiness of the ship, the cargo is transhipped into another vessel before sailing, the insurers may choose whether they will continue the policy or not, on any damage sustained being made good, but if the unseaworthiness occurs after the voyage has commenced, the insurers take the risk, even if the (substituted) vessel be of a different burthen and flag from that stated in the policy.

B. 178, 182, G. 820, Sc. 249.

761. If the period during which the insurer takes the risk is not specified in the policy, that laid down in Art. 733 as to bottomry loans will be observed.

B. 172, F. 341, G. 827-833, H. 624-634, I. 611, P. 602.

Arn. 377-389.

762. In insurances for a fixed time (*i.e.*, time policies) the liability of the insurer ceases at the moment the stipulated time expires.

F. 363, G. 834, 835 diff., I. 611.

Arn. 371, 373.

763. If for the convenience of the assured the goods are discharged at a nearer port than that mentioned in the policy

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for the termination of the voyage, the insurer has his agreed premium without any rebate.

B. 195, F. 364, G. 832, H. 653, I. 623, P. 612.
Arn. 427-429.

764. Calls at ports which are necessary for the preservation of the ship or its cargo are deemed to be covered by the policy unless they are expressly excluded.

G. 831, I. 615.
Arn. 242.

765. The assured must communicate to the insurer news relating to the progress of the vessel insured, and damages and losses that the articles insured may suffer, by the first mail after he receives them, and by telegraph if there is one, and will be liable for damages and injuries occasioned by his failing to do so.

B. 206, F. 374, G. 822, H. 654, I. 626, P. 615, Sc. 245.
Arn. 591.

766. If goods insured on the account of the captain who commands the vessel in which they are shipped are lost, the captain must satisfy the insurers of the purchase by means of the vendor's invoices, and of the shipping and carrying in the ship, by a certificate of the Spanish Consul, or, where there is none, of some other competent authority at the port of shipment, and by the other documents from the Custom-house showing seaworthiness and clearance.

All persons assured who sail with their own goods are bound by the same obligation, unless otherwise agreed.

B. 174, 175, F. 344, 345, I. 628.

767. If the policy stipulates for an increase of premium in case of war breaking out, and the amount of increase is not fixed, it will be regulated, failing an agreement between the parties interested, by experts, appointed in the way laid down by the Law of Civil Procedure, who will take into consideration the circumstances of insurance and the risks incurred.

B. 173, F. 343, G. 852, 853 diff., H. 661, I. 610, P. 604 (3).

768. A free restitution of the vessel or its cargo to the captain by the captors will inure to the benefit of the respective owners without any obligation for payment of the sums insured on the part of the insurers.

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769. Any claim under the policy must be accompanied by documents in proof of:—

(1.) The voyage of the ship; by the captain's protest or certified copy of the log.

(2.) The shipment of the goods insured; by the bill of lading and Custom-house clearances.

(3.) The contract of insurance; by the policy.

(4.) The loss of the things insured; by the same documents as (1), and the depositions of crew, if required.

Moreover, the diminution in value of the goods insured will be fixed by means of a survey by experts.

The insurers may oppose the claim and produce evidence in Court against it.

B. 214, 215, F. 383, G. 886, 888, I. 627.

770. When the necessary documents are presented, the insurer, if they are in proper order and prove the loss, must pay the indemnity to the assured within the period agreed in the policy, and if there is no such period, within ten days of the claim.

But if the insurer repudiates the claim and resists it by law, he must deposit the sum claimed, or give sufficient security to the assured according to the decision of the Judge or Court, as the case may be.

B. 215, F. 384, G. 897, 898 diff., I. 631.

771. If the insured vessel sustains damage from perils of the sea, the insurer will only pay two-thirds of the cost of the repairs, whether effected or not; in the former case the amount of the expenses will be proved by the recognised legal methods; in the latter by the valuation of experts.

The shipowner only, or a captain authorised by him, can decide on not repairing the vessel.

Arn. 799, 940, 941. In England the rule only applies to wooden vessels. See York Antwerp rules, 1890.

772. If in consequence of the repairs the value of the ship is increased more than one-third of the value stated in the policy, the insurer will pay two-thirds of the cost of the repairs, and deduct therefrom the excess in value that has been given to the vessel.

But if the assured proves that the enhanced value of the

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vessel does not result from the repairs, either because the ship was new and the damage was done on her first voyage, or that the engines or apparel and furniture destroyed were new, the increase in value is not deducted, and the insured will pay the two-thirds of the repairs in conformity with Rule 6 of Art. 854.

Arn. 940.

773. If the cost of repairs exceeds three-fourths of the value of the ship, she is deemed unfit for navigation, and may be abandoned, and if the assured does not make such a declaration (*i.e.*, if he does not give notice of abandonment), the insurers may pay the sum insured less the value of the damaged ship or its remains.

G. 444, I. 632.
Arn. 1046 diff.

774. When the matter concerns indemnities arising out of General Average losses, on the conclusion of the business of making out the average statement, its adjustment and payment, the assured will hand over to the insurer all accounts and documents proving the claims to indemnification and the sums corresponding thereto. The insurer will in his turn examine the average adjustment, and if it agrees with the conditions of the policy, he must pay to the assured the sums corresponding thereto within the specified time, or if there is no specified time, within eight days. After this period the money owing begins to bear interest. If the insurer does not find the adjustment in accordance with the terms of the policy, he may dispute it before a Judge or competent Tribunal within the same term of eight days, on placing the disputed sum on deposit.

775. The assured cannot in any case demand more than the whole sum insured, whether a vessel is saved, and, after putting into a port of distress to repair damages, is subsequently lost, whether the sum payable as General Average exceeds the sum insured, or the expense of several distinct damages and repairs in one voyage, or during the time for which the insurance is valid, exceeds the sum insured.

G. 844 diff., I. 624, P. 603, Sc. 253 diff.
Arn. 985, 986 diff.

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776. In cases of Particular Average on goods insured the following rules will be observed :—

(1.) Everything that has disappeared in consequence of theft, loss, sale on the voyage, deterioration, or any other peril of the sea covered by the policy, will be valued at its price per invoice, or, failing that, at the value stated in the policy, and the insurer will pay the amount.

(2.) In cases where on arrival of the ship in a safe port the goods are found damaged in whole or in part, surveyors will assess the value they would have had if they had arrived in good condition and what they are worth in their damaged state. The difference between the values arrived at by those means, after deducting customs duties, freights, and other similar charges, will make the amount or sum of the damage ; adding thereto expenses of survey and any others there may be. If the whole insured cargo is damaged, the loss will be paid in full ; but if the damage is confined to a part, the assured will receive the corresponding portion of the insurance. If anticipated profits of the shipper be the subject of the special insurance, it will be separately adjusted.

G. 879-881.
Arn. 931.

777. When the amount of Particular Average on ship is fixed by experts, the assured will prove his claim in accordance with the provisions of the final clause of the 9th section of Art. 580, and the insurer will pay in conformity with the provision of Arts. 858 and 859.

G. 876.
Arn. 940.

778. The insurer cannot compel the assured to sell the thing insured for the purpose of fixing its value.

G. 877, 879.

779. If the valuation of the things insured takes place in a foreign country, the laws, practices, and customs of the place where it is made must be observed, without prejudice to the provisions of this Code for the proof of facts.

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G. 839, 841.
Arn. 910-912.

780. When the sum insured is paid by the insurer, he is subrogated to the assured in all rights and actions pertaining to him against persons by whose wilful act or default the loss of the things insured has been caused.

H. 284, G. 872, 809, Sc. 239.

North of England Ins. Ass. v. *Armstrong*, L.R. 5, Q.B. 248. *Simpson* v. *Thomson*, 3 App. Cas. 284.

(IV.)

Cases in which the Contract of Insurance is annulled, rescinded, or modified.

781. A contract of insurance is null which is made:—

(1.) Upon ships or goods which are already the subjects of a loan on bottomry for their full value.

If the bottomry loan is not for the whole value of the ship or goods, the insurance may remain valid on the portion outside the loan on bottomry.

(2.) Upon the lives of the crew and passengers.

(3.) Upon the wages of the crew.

(4.) Upon contraband goods in the country of the ship's flag.

(5.) Upon a vessel habitually used in a contraband trade, where the damage or loss is occasioned by such use, in which case the insurer will retain $\frac{1}{2}$ per cent. of the sum insured.

(6.) Upon a vessel which, without the intervention of *force majeure*, does not go to sea for six months following the execution of the policy, in which case, over and above the annulling of the policy, the insurer will be entitled to $\frac{1}{2}$ per cent. of the sum insured.

(7.) Upon a vessel which does not undertake the agreed voyage, or which goes to a different place from that agreed on, in which case also the insurer will be entitled to $\frac{1}{2}$ per cent. of the sum insured.

(8.) On goods, the valuation of which has been fraudulently made.

(1.) B. 176, F. 347, H. 599, 600, I. 607 (2), P. 600 (2). Arn. 40, 88.

(2.) 14 Geo. III., c. 48. This only refers to an insurance by owner or

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master; the seaman may insure his own life like any one else, and there is a special division of the Commercial Code (Book II., Tit. VIII., Secs. I. and III.) regulating this contract.

(3.) B. 168 diff., G. 784, H. 599, I. 607 (1), P. 600 (1). Arn. 42-45, 89 diff.

(4.) H. 599, P. 600 (3). Arn. 712.

(5.) H. 599, P. 600 (3). Arn. 688-697.

(6.) B. 177, F. 349, G. 817, 818. Arn. 408.

(7.) B. 177, 182, F. 351, G. 817, I. 614. Arn. 367.

(8.) B. 169, 188, F. 348, I. 428. Arn. 301, 302.

782. If several insurances have been made without fraud on the same thing, the first only will be effective, if it covers the whole value. The subsequent insurers are free from liability, and will receive $\frac{1}{2}$ per cent. of the sum insured.

If the first policy does not cover the whole value of the thing insured, the liability for the residue will fall on subsequent insurers, according to the date of the execution of the policies.

B. 189, F. 359, G. 790-792, 900, H. 277, I. 426, 427, Sc. 236.

Arn. 328, 329 diff.

See "*Nuevo Primer Barreras*," 3 R.I.D.M. 222.

783.. The assured is not absolved from payment of the premiums in full to the several insurers if he has not given the later ones information of the rescission of their contracts prior to the arrival of the article insured at its port of destination.

H. 281 diff.

Arn. 331.

784. An insurance that is made after the loss, damage or safe arrival of the thing insured at its port of destination, will be null whenever it may be reasonably presumed that notice of one or other of the events has reached any one of the contracting parties.

This presumption exists when the notice has been published in any place, and a sufficient time has elapsed for communication by post or telegraph with the place where the insurance is made, without prejudice to other means of proof that the parties can make use of.

B. 196, F. 365, 366, G. 789, H. 269, 270, 597, I. 430.

Arn. 235. *Bradford* v. *Symondson*, 7 Q.B.D. 456.

785. A contract of insurance on good or bad news is not

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annulled unless it is proved that one of the contracting parties knew, at the time of making the contract, the result of the matter hoped for or feared.

If this is proved, the person committing the fraud will give up to the other party to the contract one-fifth part of the sum insured, without prejudice to any criminal liability there may be.

F. 367, H. 598.

786. If the person making an insurance, with knowledge of the total or partial loss of things insured, is acting on behalf of another person, he will be personally liable for his actions as if he was acting on his own behalf, and if, on the other hand, the agent is ignorant of the fraud committed by the assured principal, all liabilities are on the latter, but the agent is bound to pay the agreed premium.

The same rule governs with regard to an insurer who makes a contract by means of a broker when he knows that the goods are in safety.

787. If, whilst the goods are at risk, the insurer or the assured is pronounced bankrupt, both have a right to require bail, the one to cover the liability and the other to ensure the payment of the premium, and if the assignee in bankruptcy refuses to give it within three days of the demand the contract is rescinded.

If an accident happens within the three days and without bail having been given, there is no right to an indemnity nor for payment of the premium.

F. 346, G. 903, H. 285, I. 433, Sc. 240.
Arn. 106, 107.

788. If, where a fraudulent contract of insurance has been made by several insurers, one or more have acted in good faith, these latter have a right to get the premium in full from those who have acted fraudulently, the assured being free from all liability. Similar arrangements will apply as between assured persons and insurers where some of them are the authors of the fraudulent insurance.

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(V.)

Abandonment of Things Insured.

789. The assured may abandon the things insured to the insurer, and demand payment of the insurance money from the insurer:—

(1.) In case of shipwreck.

(2.) On condemnation of the ship by reason of stranding, breaking up, or any other peril of the sea.

(3.) On capture, embargo, or detention by order of the national or a foreign government.

(4.) On the total loss of the things insured, understanding by that a diminution to the extent of three-quarters of the insured value.

Other damages are deemed to be Average losses, and are borne by the proper people, in accordance with the conditions of the insurance and the provisions of the Code.

An abandonment cannot proceed in either of the first two cases if the vessel wrecked, stranded, or condemned can be got off and got afloat and repaired so as to continue the voyage to its port of destination, unless the cost of repairs exceeds three-quarters of the value at which the vessel is insured.

B. 199 diff., 201, 222, F. 369, 371, 389, G. 865, H. 663, 664, I. 632, P. 616, Sc. 256.

Arn. 11, 953.

See "*Nuevo Primer Barreras*," 3 R.I.D.M. 222.

790. On proof of the restoration of the ship to a seaworthy condition, the insurers are only liable for the expenses caused by the stranding and any other damage that the ship has sustained.

H. 664.

Arn. 972.

791. In cases of shipwreck and capture the assured is bound to use all diligence that the circumstances demand to save and recover the things that are lost, without prejudice to an abandonment made at a proper time, and the insurer must repay the lawful expenses of such salvage, as far as the value of the things salved goes, on which such expenses are a lien in default of payment.

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B. 221, 224, F. 381, G. 823, 874, H. 655, 665, I. 629, 641, Sc. 246. Arn. 363, 982.

792. If the vessel is found to be irreparable, the assured must give notice to the insurer, by telegraph if possible, and if not, then by first post after receipt of the news. Those interested in the cargo who are at the spot, or, in their absence, the captain, will try by all possible means to convey the cargo to its port of destination, in accordance with the provisions of this Code, in which case risks and expenses of discharge, warehousing, reshipping and transhipping, excess of freight, and all other charges on the effects insured up to delivery in the place mentioned in the policy are all on account of the insurer.

B. 223, 226, F. 390-394, G. 822, 865, I. 634, 635, P. 618. Arn. 960.

793. Without prejudice to what is laid down in the preceding Article, the insurer has a period of six months to get the goods to the destination if the condemnation takes place in European waters between the Sound and the Bosphorus, and of one year if it occurs in a more distant place, such term commencing from the day on which the assured has given notice of the disaster.

B. 206, 227, F. 394, I. 634, 635, P. 618.

By Art. 7 of the Civil Code, 1889, month means period of thirty days; day is twenty-four hours, and night period from sunset to sunrise.

794. If, notwithstanding every effort of those interested in the cargo, and of the captain and insurers, to convey the goods to their port of destination, in accordance with the preceding Articles, they cannot get a vessel suitable to carry them on, the assured owner may abandon the said goods.

B. 227, F. 394, I. 634, 635, P. 618.

795. In case of an interruption of the voyage by an embargo or forcible detention of the vessel, the assured is bound to communicate the facts as soon as he gets notice of them, and he cannot avail himself of proceedings to abandon until the terms fixed by Art. 793 have expired.

He is, moreover, bound to give the insurers whatever assistance is in his power towards raising the embargo, and he must take all proper steps to this end himself, if in con-

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sequence of the insurers being in a distant country he cannot act in unison with them.

B. 220, 221, F. 387, 388, H. 654, 655, I. 629, 636, P. 619.
Arn. 1040.

796. In an abandonment of a ship, the freight of goods saved is deemed to be included, and when this is paid in advance, it is considered as belonging to the insurers, reserving the rights of other creditors in conformity with Art. 580.

G. 872.

797. Notice will be held to have been received so as to allow the regulations of Art. 793 to become operative as soon as it has been published, whether by means of newspapers or by commonly accredited report amongst merchants at the place of residence of the assured, or by proof that he has received news of the disaster by letter or telegram from the captain, consignee, or other correspondent.

Arn. 690.

798. The assured, nevertheless, has a right to abandon when in the case of ordinary voyages one year, and in ocean voyages two years have elapsed without receipt of any news of the vessel. In such case he can claim the insurance money from the insurer, without being obliged to prove the loss, but he must prove the absence of news by a certificate from the Consul or Maritime authority of the port from which the vessel sailed, and another from the Consuls or Maritime authorities of the port to which the ship was bound and to which she belongs, which show that she has not been at those places during the period.

For this proceeding, the same period will be allowed as laid down in Art. 804, voyages being considered "ordinary" which are to the coasts of Europe, and Asia, and Africa on the Mediterranean, and with respect to America those to ports between the Rivers Plate and St. Lawrence, and to the islands lying between the coasts of Spain and the places mentioned in these Articles.

B. 207, F. 375 (1862), G. 865, 866, H. 667, I. 633, P. 617, Sc. 258.
Arn. 745-747 diff.

799. In the case of time policies, there is a legal presumption that the loss happened within the time covered by the

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policy, unless the insurer can prove that it happened after his liability had ceased.

B. 208, F. 376, H. 674, I. 633, P. 617.

Arn. 745-747, and see 57 & 58 Vict., c. 60, sec. 74 (2).

800. The assured, at the time of abandoning, must declare all insurances effected on the things that are abandoned as well as all bottomry bonds on the same, and until he has made this declaration, the time during which he ought to be paid his insurance does not begin to run.

If he makes a fraudulent declaration, he will forfeit all rights under the insurance, but will be liable for loans taken up on the things insured, notwithstanding their loss.

B. 211, 212, F. 379, 380, G. 873, H. 675, I. 638, P. 621.

801. If the vessel is taken as prize, and there is not time for the assured to concert plans with the insurer nor to wait his instructions, he may on his own account, or if he is not present the captain may, take steps to recover the things insured, giving notice to the insurer as soon as possible.

This latter may adopt an agreement made by the assured or the captain, or not, on giving notice of his resolution within twenty-four hours of receiving notice of the agreement.

If he adopts it he must forward at once the sum agreed on for ransom, and the further risks of the voyage remain on his account in conformity with the terms of the policy. If he does not adopt it, he will pay the sum insured, losing all claim to the ransomed goods, and if he does not state what his intention is within the prescribed time, he is deemed to have refused the agreement.

B. 221, F. 395, 396, I. 641.

Arn. 982, 983.

802. If the vessel is recaptured, and the assured restored to the possession of his property, all expenses and losses caused by the capture are considered as Average losses and made good by the insurer, and if in consequence of the recapture the goods insured pass into the possession of a third party, the assured may avail himself of the right to abandon.

H. 679, P. 625.

Arn. 983.

803. When an abandonment is accepted or declared to be lawful, the property in the things abandoned, with all advan-

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tages or deteriorations that have accrued to them subsequent to the abandonment, pass to the insurer, and the fact that a vessel lawfully abandoned is repaired does not exonerate him from payment.

B. 216, F. 385, G. 875, H. 678, 679, I. 640, P. 623, Sc. 263.
Arn. 973.

804. Abandonment is not allowed :—

(1.) If the loss happened before the voyage commenced.

(2.) If it is partial or conditional, without including in it all the things insured.

(3.) If the intention of making it is not announced to the insurers within the four months next following the day on which the assured has received news of the loss, and if the abandonment is not definitely made within ten months similarly reckoned when the disaster has happened in European, and Asiatic, and African Mediterranean ports, and in those of America, between the Rivers Plate and St. Lawrence, and within eighteen months with respect to other places.

(4.) If it is not made by the owner himself, or some person specially authorised by him, or by the broker who made the insurance.

(1.) B. 200, F. 370, P. 622.
(2.) B. 202, F. 372, G. 870, H. 677, I. 639, P. 622. Arn. 954 956.
(3.) B. 203, F. 373, G. 868, H. 672, I. 637, 638, P. 620. Arn. 960.
(4.) Arn. 956.

805. In case of abandonment the insured must pay the sum insured within the time specified in the policy, and if no time is specified therein within sixty days after the abandonment is accepted or the declaration mentioned in Art. 803 is made.

B. 213 diff., F. 382 diff., H. 680, I. 631.
Arn. 1091.

Title IV.

The Perils, Damages, and Accidents incident to Maritime Trade.

Section I.

Average Losses.

Art. 806. For the purposes of this Code, the following matters are Averages :—

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(1.) Every extraordinary or unusual expenditure incurred during the voyage for the preservation of the ship or cargo or both.

(2.) Every injury or deterioration that the ship sustains from the time of her putting to sea from her port of departure until she is anchored in her port of destination, and those sustained by goods from the time they are put on board in the loading port until they are discharged in the port to which they are consigned.

B. 99, F. 397, G. 702, 703, H. 696, I. 642, P. 634, E. 235.
News. 194, Arn. 819 *et seq.*, M. & P. 427, 491.

807. Minor and ordinary expenses usual in navigation, such as coast and harbour pilotage, boats and tugs, anchorage dues, visits, health, quarantine, lazzaretto and other port dues, lighterage and discharge of goods on the mole, and any other matters of ordinary occurrence in navigation are considered as ordinary expenses on account of the ship in the absence of an express agreement to the contrary.

F. 406, H. 708, I. 642, P. 634 (1), E. 241.

808. Averages are :—

(1.) Simple or particular.

(2.) Gross or general.

B. 101, F. 399, G. 702, 703, H. 698, I. 642, P. 635, E. 236.
News. 194, 205, M. & P. 426, 491.

809. As a general rule all expenses and losses caused to the vessel or its cargo which have not resulted in benefit and general advantage to all concerned in the ship and cargo, and especially those hereinafter mentioned, will be Simple and Particular Averages :—

(1.) Damages accruing to the cargo, from its shipment until its discharge, as well by its own inherent vice as by perils of the sea, or by *force majeure*, and the expenses incurred to avoid and repair them.

(2.) Damages and expenses accruing to the vessel in its hull, apparel, stores, or furniture, from the same causes or reasons from the time it puts to sea from its port of departure until it is anchored and secured in that of its destination.

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(3.) Damages sustained by goods carried on deck, except when in the home trade (*cabotage*) it is allowed by law.

(4.) The wages and provisions of the crew when the vessel is detained or placed under embargo by lawful orders or superior force, if the freight is agreed on for the whole voyage.

(5.) The necessary expenses of putting into a port for repairs or provisions.

(6.) The depreciation in value of things sold by the captain in a port of distress to pay for provisions or necessaries for the crew, or to meet any other necessary expenditure for the ship, the loss resulting from which sale will be carried to the ship's account.

(7.) The provisions and wages of the crew whilst the vessel is in quarantine.

(8.) Damage sustained by ship or cargo by falling against or colliding with another when it is purely accidental or unavoidable. If the accident happens in consequence of the fault or neglect of the captain, he will be answerable for all the damage caused by it.

(9.) Any damage caused to the cargo by the defaults, neglect, or barratry of the captain or crew, without prejudice to the right of the owner to compensation from the captain, the ship and the freight.

B. 102, 103, F. 403, G. 703, 709, H. 701, I. 646, P. 635 (2), Sc. 189, 190, E. 239.

Arn. 823, M. & P. 826. With reference to (8)-(9) see Articles 826 *et seq.*, *post*, and with reference to barratry in (9) see note to Art. 756, *ante*.

810. The owner of the thing which gives rise to the expense or sustains the damage, will bear Simple or Particular Averages.

B. 104, F. 404, G. 703, H. 698, I. 647, P. 637, E. 237.

811. As a general rule all damages and expenses deliberately caused to preserve the vessel, its cargo, or both together from a peril, and which is recognised and real, and in particular in the cases hereinafter mentioned, are Gross or General Averages:—

(1.) Goods or money used in the ransom of a ship or

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cargo captured by enemies, privateers or pirates, and the provisions, wages and expenses of a ship whilst detained pending the settlement of the ransom.

(2.) Goods jettisoned to lighten the ship, whether belonging to the cargo, to the ship, or to the crew, and the damages occasioned by the jettison to the goods remaining on board.

(3.) Cables or spars cut away or rendered useless, and anchors and chains that are abandoned to save the cargo, the ship, or both.

(4.) The expenses of lightering or transhipping a portion of the cargo to lighten the ship and put her into a condition to enter a port or roadstead, and the injuries resulting therefrom to the goods put into lighters or transhipped.

(5.) Damage done to the goods composing the cargo by making a hole in the vessel to clear her of water and prevent her foundering.

(6.) Expenses incurred in getting a vessel afloat which has been run ashore for the purpose of salving her.

(7.) Damage done to a vessel that it has been necessary to open, make holes in or break into to salve the cargo.

(8.) The expenses of medical treatment and sustenance of members of the crew who have been wounded or maimed in the defence or preservation of the ship.

(9.) The wages of any member of the crew detained as an hostage by enemies, privateers, or pirates, and his necessary expenses in prison, until his return to the ship, or to his own home if he prefer it.

(10.) The wages and provisions of the crew of a vessel chartered by the month during the time that she is under embargo or detained by superior force or order of Government, or to repair damages sustained for the benefit of all.

(11.) The diminution in value resulting from the sale of things in a port of distress for the repairs of a vessel in consequence of General Average.

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(12.) The expenses of making up the Average statement.

B. 102, 103, F. 400, G. 702, 708, H. 699, I. 643, P. 635, Sc. 187, 188, E. 238.

812. All persons interested in the ship and cargo on board it, at the time of the average loss occurring, contribute to make good General or Common Average.

B. 104, F. 401, G. 702. 718, I. 647, H. 698, 804, 705, P. 636, Sc. 187, E. 237.

In Belgium the contribution is by ship and cargo in full on their value at port of discharge, by freight unpaid or liable to be repaid on half its value (B. 105). In France on cargo in full and on half ship and freight. In Germany on ship and cargo in full (G. 702, 719, 720) and two-thirds of the freight (G. 723), subject to modifications between two-thirds and half by the several States. In Holland on ship and net freight and cargo in full (H. 698, 727, 728), with a special provision with regard to goods in lighters and the lighters themselves. In Italy (I. 647), Portugal (P. 636), and Egypt (E. 251), as in France, on cargo in full and on half ship and freight.

By the York-Antwerp Rules, ship, freight and cargo are to contribute on the actual net value, as has been the practice in England from time, in a mercantile sense, immemorial. See Lowndes on *General Average*, 4th ed., 305, 308, and Art. 846 *post*, p. 96.

Belgium (B. 100), France (F. 398), Holland (H. 697), Italy (I. 642), Portugal (P. 634 (2)), and Egypt (E. 237), in terms allow the parties concerned to contract themselves out of the rules of the respective Codes as to General Average and make special agreements, thereby letting in the York-Antwerp Rules if desired. It may be a serious question how far they can be made operative elsewhere when they differ from the law as laid down by the Code.

813. To bring expenses and sacrifices into the category of General Average, there must be an antecedent resolution on the part of the captain, after consultation with the mate and other ship's officers, and after hearing the opinion of persons interested in the cargo who are on board.

If these latter object, and the captain and officers, or a majority of them, or the captain himself, if in a minority, consider certain measures to be necessary, they may be carried out on the captain's own responsibility without prejudice to the right of the shippers to take proceedings before a Judge or competent Court to enforce their rights, if they think that he acted maliciously, or without due skill and care. If persons interested in the cargo who are on board the ship are not consulted, they will not contribute to the General Average that the

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captain incurs, unless the urgency of the case was such that there was no time for deliberation.

(See Law of Mar. Mort., 1893, § 34 *post*, p. 122.)

B. 116, F. 410, G. 485, 490, 491, 711, H. 699 (23), 367, 368, I. 508, 643 (19), 657, P. 503, 655, Sc. 195, E. 245.

814. The result of the consultation which causes the General Average losses must be set out in the log-book, stating the motives and reasons which brought it about, the votes to the contrary, and cause of the disagreement, if any, and the irresistible and urgent reasons that the captain has obeyed if he has acted on his own authority.

In the former case, the entry will be signed by all those present, who are able to write, and if possible before the act is done; and if not, then as soon after as possible. In the latter case, by the captain and officers. In the entry, following the result of the consultation, all articles jettisoned must be set out with precision, and mention must also be made of damage done to articles remaining on board. The captain must send a copy of this document to the Maritime Judicial Authority of the first port he makes within twenty-four hours of his arrival, and must confirm it on oath.

(See Law of Mar. Mort., 1893, § 34 (1) *post*, p. 122.)

B. 116, F. 412, G. 487, 490, H. 367, 368, I. 508, 657, P. 503, Sc. 195, E. 2471.

815. The captain will superintend a jettison, and give orders to cast goods overboard in the following order:—

(1.) Those which are on deck, commencing with such as are in the way of the ropes and imperil the ship, and by preference, if possible, the heaviest and least useful or valuable.

(2. Those which are stowed between decks, always commencing with the heaviest and least valuable, and going on as far as the quantity and number of articles is absolutely essential.

F. 411, H. 368, I. 645, Sc. 194, E. 246.

Belgium, Germany, and Portugal seem to have no special arrangements on this point, which seems to be only an expression of what common-sense would teach any seaman.

816. For the purpose of claiming General Average, and having a right to compensation, owners of goods thrown

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overboard must, as to cargo, prove its presence on board by a Bill of Lading, and as to ship's furniture, by the ship's Inventory, drawn up before sailing, in conformity with the 1st Clause of Art. 612.

B. 109, F. 420, G. 710 (2), H. 732, I. 649, 656, P. 640, Sc. 203, E. 255.

817. If a vessel is lightened in consequence of bad weather, to facilitate her entry into a harbour or roadstead, and any part of the cargo is transhipped into lighters or barges and then lost, the owner of such part is entitled to compensation as though the loss was a General Average loss, the burden being distributed over the whole of the ship and cargo of which it formed part.

If, on the other hand, the goods transhipped are saved and the vessel is lost, that which is saved incurs no liability.

F. 427, G. 708 (2), H. 699 (14, 17), 702-705, I. 652, P. 643, E. 264.

818. If it is necessary, for the purpose of preventing the spread of a fire in a harbour, roadstead, creek or bay, to determine to sink a vessel, the loss will be treated as a General Average, to which the other vessels that are preserved will contribute.

There seems to be no similar provision to this in any of the Maritime Codes, and though the idea is no doubt equitable, there would seem to be insuperable difficulties in enforcing it, except as against vessels belonging to the same port, or at all events the same State.

Section II.

*Ports of Distress.**

819. If the captain is of opinion in the course of the voyage that the vessel cannot prosecute her voyage to her port of destination on account of provisions running short, or from a well-founded fear of detention, privateers or pirates, or from any accident of the seas which disables the vessel, he must call the officers together and summon those interested in the cargo who are present on board, and who will assist at the conference without a right to vote; and if, on examination of the circumstances of the case, the captain's opinion

* Spain and Portugal are the only States which have a special section of their Codes devoted to this subject; the rules respecting it in other States are more general.

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is considered to be well founded, he will be permitted to make for the nearest and most convenient port, a proper statement being drawn up and entered in the log-book and signed by all.

The captain retains a deciding vote (*voto de calidad*), and those interested in the cargo may make such claims and protests as they think fit, which will be set out in the statement for such uses as they may legally serve.

B. 35, F. 245, G. 485, 505, 708 (4), H. 367, I.M.M.C. 94, P. 654, 655, E. 245.

820. Putting into a port of distress will not be deemed legitimate in the following cases :—

(1.) If the failure of provisions arises from the ship not having been victualled for the voyage in accordance with use and custom, or if the provisions have been rendered useless or lost by being badly stowed or not properly looked after.

(2.) If the risk of enemies, privateers, or pirates is not recognised as obvious and well founded on actual facts capable of proof.

(3.) If the defect in the vessel arises from her not having been properly repaired, furnished, equipped and fitted out for the voyage, or from any imprudent arrangement of the captain.

(4.) Whenever malice, negligence, want of foresight or want of skill on the captain's part give rise to the circumstance which causes the loss.

B. 103, H. 700, I. 646 (4), P. 657, 658.

821. The expenses of putting into a port of distress will in all cases fall on the shipowner or charterer, but these persons will not be liable for losses which may ensue to the shippers by reason of the putting in, provided always that it is legitimate.

If not legitimate the shipowner and captain will be jointly liable.

B. 103, I. 643 (10), 646 (4), P. 656, 659.

Cf. York-Antwerp Rules (1890), 10-12, which again differ from the practice in England as deduced from the two recent leading cases of *Attwood* v. *Sellar*, 5 Q.B.D. 286, and *Svendsen* v. *Wallace*, 10 App. Cas. 404.

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by the Average Adjusters' Association in 1886. These are respectively as follows :—

York-Antwerp Rules, 1890.

Rule X.—Expenses at Port of Refuge, etc.—(*a.*) When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice, or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as General Average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place, consequent upon such entry or return, shall likewise be admitted as General Average. (*b.*) The cost of discharging cargo from a ship, whether at a port or place of loading, call, or refuge, shall be admitted as General Average, when the discharge was necessary for the common safety or to enable damage to the ship, caused by sacrifice or accident during the voyage, to be repaired, if the repairs were necessary for the safe prosecution of the voyage. (*c.*) Whenever the cost of discharging cargo from a ship is admissible as General Average, the cost of reloading and storing such cargo on board the said ship together with all storage charges on such cargo shall likewise be so admitted. But when the ship is condemned or does not proceed on her original voyage, no storage expenses incurred after the date of the ship's condemnation or of the abandonment of the voyage shall be admitted as General Average. (*d.*) If a ship under average be in a port or place at which it is practicable to repair her, so as to enable her to carry on the whole cargo, and if, in order to save expenses, either she is towed thence to some other port or place of repair or to her destination, or the cargo or a portion of it is transhipped by another ship, or otherwise forwarded, then the extra cost of such towage, transhipment, and forwarding, or any of them (up to the amount of the extra expense saved) shall be payable by the several parties to the adventure in proportion to the extraordinary expense saved.

Rule XI.—Wages and Maintenance of Crew in Port of Refuge, etc.—When a ship shall have entered or been detained in any port or place under the circumstances, or for the purposes of the repairs, mentioned in Rule VII., the wages payable to the master, officers and crew, together with the cost of maintenance of the same, during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted as General Average. But when the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the masters, officers and crew incurred after the date of the ship's condemnation or of the abandonment of the voyage, shall not be admitted as General Average.

Rule XII.—Damage to Cargo in Discharging, etc.—Damage done to or loss of cargo necessarily caused in the act of discharging, storing, reloading, and stowing, shall be made good as General Average, when and only when the cost of those measures respectively is admitted as General Average.

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Resolutions of the Average Adjusters' Association, 1886.

(1.) * That when a ship puts into a port of refuge for the purpose of repairing damage which is itself the subject of General Average, and sails thence with her original cargo or a part of it, the outward as well as the inward port charges, and the warehouse rent and reloading of the cargo, equally with the discharging, shall be treated as General Average.

(2.) * That when a ship puts into a port of refuge for the purpose of repairing damage which is itself the subject of Particular Average (or not of General Average), the inward port charges and the cost of discharging the cargo to repair the ship shall be General Average, the warehouse rent of cargo and the cost of reloading and outward port charges shall be a particular charge on freight.

(3.) That no distinction be drawn, in practice, between discharging cargo for the common safety of ship and cargo, and discharging it for the purpose of effecting, at an intermediate port or ports of refuge, repairs necessary for the prosecution of the voyage.

(4.) That when the cargo is discharged for the purpose of repairing, reconditioning, or diminishing damage to ship and cargo which is itself the subject of General Average, the cost of storage on it and of reloading it shall be treated as General Average, equally with the cost of discharging it.

(5.) That damage necessarily done to cargo by discharging, storing, and reloading it be treated as General Average when and only when the cost of those measures respectively is so treated.

822. If it is necessary to discharge the cargo for the purpose of repairing the ship or for its own preservation from loss, the captain must request leave from the Judge or proper Tribunal to lighten (the ship) and carry (the goods) on shore, giving notice to the person interested in the cargo, or to his representative, if present.

In a foreign port he will similarly apply for leave to the Spanish Consul in a place where there is one.

In the former case (*i.e.*, for repairs to the ship), the expenses will be on shipowner's account, and in the latter (*i.e.*, the preservation of the cargo) they will be at the charge of the owners of the merchandise for the benefit of which the discharge was effected.

If the discharge is proved to be for both reasons, the

* These two Resolutions failed to be confirmed in 1887 by two-thirds of the members of the Association, so remain unconfirmed. See Lowndes, *General Average*, 4th ed., p. 216 (n.).

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expenses are distributed *pro rata* on the value of the ship and cargo.

Cf. York-Antwerp Rules (1890), 10-12, B. 103, I. 643 (12), P. 660, and see note to Art. 821 *ante*.

823. It will be the duty of the captain to protect and preserve the cargo when disembarked, and he will be responsible for it except in case of *force majeure*.

P. 661.

824. If the whole cargo or part of it appears to have sustained unexpected damage, or to be in imminent peril of damage, the captain may make application to the Judge, or competent Tribunal, or the Consul, as the case may be, for a sale of the whole or a part of it, and those who have cognisance of the matter will, after survey and report by experts, advertisements, and other suitable formalities, and an entry in the ship's book as laid down in Art. 624, give their authority for the sale.

The captain must in this case prove the legality of his proceedings, under penalty of answering to the shipper for the price the goods would have fetched if they reached their port of destination in sound condition.

G. 504, P. 661.

See *The August*, 1891, P. 328.

825. The captain will be answerable for damages caused by his delay, if he does not proceed on his voyage when the reason which caused him to put into a port of distress has ceased to operate.

If the reason for putting into port was the fear of enemies, privateers, or pirates, there shall be, before sailing, a consultation and consent of the officers and those interested in the cargo who are present, as laid down in Art. 819.

B. 83, I. 596, 646, P. 663.

Section III.

Collisions.

826. If one ship fouls another in consequence of the default, neglect, or want of skill of the captain, mate, or any other member of the ship's company, the owner of the vessel which

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fouls the other will make good the damages and injuries sustained, after they have been assessed by experts.

B. 228, F. 407, G. 736, H. 534, I. 661, P. 695, R. 419, 420, 451 *et. seq.*, Sc. 220, E. 242 (2). M. & P. 631, Macl. 286.

The ordinary Tribunals have jurisdiction to try a collision action brought by a foreigner when the collision is in Spanish waters, 16 J.D.I.P. 144; 19 J.D.I.P. 275; 7 R.I.D.M. 603; 20 J.D.I.P. 506; but it is very doubtful if they would entertain such a case when the collision was in the High Seas. The limit of territorial waters in Spain is considered to be six miles, or 11·111 metres, and not three as in most other States. See Replies of Professor Manuel Torres-Campos in *Fifteenth Annual Report of the Association for the Reform and Codification of the Law of Nations*, on the subject of territorial waters.

This article clears up the doubt which existed—whether in Spain a shipowner was liable at all for the acts of his servants occasioning a collision. See *The M. Moxham*, 1 P.D. 43, 107; *The Lem*, 6 P.D. 148. The liability of the owner is limited to the value of ship and freight. See Art. 837 *post*, and as to liability of the actual wrongdoer, Arts. 809 (8) and 829.

There is no right to arrest a ship and get bail pending trial of a collision in Spain, 2 R.I.D.M. 225.

827. If both vessels are to blame for the collision, each of them will bear its own loss, and both will be answerable in full for the damage and injuries sustained by their cargoes.

B. 229, damages divided in *ratio* of default. F. 407, the law, though silent on the special case of both to blame, is interpreted by the Courts to mean that the total damage to both vessels is apportioned in the *ratio* of the fault attaching to each. G. 737 and H. 535, I. 662, each bears his own loss. Sc. 220, damages in discretion of Court. P. 666, as in Belgium. R. 463, each bears his own damage and compensates the cargo. E. 242 (3), divided between the ships in proportion to their value.

M. & P. 631, 632, Macl. 287-389.

Spain has followed Italy in altering her law on this point. It is now settled in England (*The Bernina, Mills* v. *Armstrong*, 14 App. Cas. 1) that the relatives of a passenger or innocent member of the crew can recover full damages from the other vessel when both are to blame, and a guilty member of the crew can recover nothing; it is not, however, decided whether a member of the crew who is, so to speak, an innocent *particeps criminis*, as the helmsman or engineer, who in obedience to orders executes an erroneous manœuvre, can recover or not, whilst the right of recovery of a passenger against his own ship is governed by the contract he has made (*Haigh* v. *R.M.S.P. Co.*, 5 Asp. M.L.C. 189; *Thompson* v. *R.M.S.P. Co.*, 5 Asp. M.L.C. 190; *R.* v. *Judge of City of London Court*, 5 Asp. M.L.C. 283).

In the special case where two vessels belonging to the same owners

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come into collision by the fault of both, and cargo is damaged which is carried under a Bill of Lading exonerating the owners from liability for the negligence of their servants, in England the cargo-owners recover half from the owners of the two ships in their capacity of owners of the vessel on which the cargo was not carried (*Chartered Mercantile Bank of India, etc.*, v. *Netherlands Indian Steam Navigation Co.*, 10 Q.B.D. 521), whilst in France they recover the whole (*Charles Quint* and *Ville de Brest*, 6 *R.I.D.M.* 35).

In the ordinary case of "both to blame," in England cargo can recover half from the other vessel, subject to limitation of liability and the balance from the carrying ship, or may leave the other ship alone and recover all under the contract from the carrying ship, subject, however, to the limitation of liability, and to any special clauses in the Bill of Lading. In France it can recover the whole from both vessels jointly and severally (*The Durley* and *Sirius*, 4 *R.I.D.M.* 259; *Charles Quint* and *Ville de Brest*, 6 *R.I.D.M.* 35), subject to special exonerating clauses as to the liability of the carrying ship, and in Germany the cargo can recover *in solido* against either, and there is no contribution between them (1 *R.I.D.M.*, p. 191), in both of these cases the liability being limited to the value of ship and freight after the damage. In the new Portuguese Code it appears (1) that a collision is presumed to be accidental until the contrary is proved (Art. 669), and that in case of accident the loss rests where it falls (Art. 664), in case of doubt as to which vessel is to blame both are liable to the cargo (Art. 668), when both are to blame each is liable in proportion to the blame attaching to it (Art. 666), and it further appears (Art. 492) that in case of collision the liability of a shipowner is not limited to the value of ship and freight, or at all.

In a very recent case a Court of Appeal in the United States has held that where two ships are to blame, but very unequally, for a collision in an action by the captain of one against both jointly, the Court can and will make an order which has the effect of making the more guilty vessel pay the larger share of the damage, the *Victory* and the *Plymothian*, 25 U.S. App. 271, but the usual decree is that a moiety of the damage be recovered from each, and that failing to get a moiety from one, the balance of that moiety in addition to the other moiety be recovered for the other. *The Alabama* and *The Gamecock*, 2 Otto 695. But if the cargo-owner elects to sue either ship singly he will get a decree for the whole damage from that ship, leaving it to settle the matter with the other ship in subsequent proceedings (*The Britannia*, 39 Fed. Rep. 395). It has also very recently been decided that the Act of Congress of 15th Feb., 1893, commonly called Harter's Act, releasing the shipowner from liability provided the ship was seaworthy, does not apply to collision actions between ships (*The Delaware*, 19 Sup. Crt. Rep. 516).

828. The rule of the previous article is applicable in the case where it cannot be determined which of the two ships caused the collision.

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There is no provision in the present Belgian Code for this case; it would probably be considered as accidental, when under B. 228 each ship and each cargo bears its own loss. F. 407, damage divided equally between the vessels. G. 737, and Sc. 221, as in this Code. H. 538, whole damage to both ships and cargoes massed together and divided proportionally. I. 662, and P. 668, as in this Code, but specially including liability for personal injuries. Russia has no provision for this case. E. 242 (3), total damage divided between ships in proportion to their values.

See notes to preceding Article.

829. In the cases referred to, a right of civil action by the shipowner against the person causing the damage is reserved, as also the criminal liabilities which may arise from it.

B. 12, 21, 230, F. 216, 221, 230, G. 736, H. 321, 349, 534, 535, I. 663, & M.M.C. 66, P. 671, 672, E. 30, 35, 89, 242, M. & P. 614.

830. If one vessel collides with another by pure accident, or unavoidable circumstances (*force majeure*), each vessel and its cargo bears its own loss.

B. 228, F. 407, G. 737, H. 536, 540, I. 660, P. 664, 669, R. 462, 464, Sc. 221, E. 242 (1). See Art. 809 (8) *ante*.

M. & P. 631, Macl. 286.

It is now decided in England that a collision between A. & B., not occasioned by negligence of ship A., creates no liability of A. to her cargo, it being within the ordinary exception in Bills of Lading, of "dangers and accidents of the sea" (*The Xantho*, 12 App. Cas. 503), and in an action against B. by the cargo of A., the ground of action must be some actual or implied negligence; there is, however, this difference between the case of the two ships, in an action against A. on the contract it is for A. to excuse herself, in an action against B. it is for the plaintiffs to prove negligence.

831. If a vessel comes into collision with another by the fault of a third, the owner of this third vessel will make good the damages and losses arising from the collision, reserving the captain's civil responsibility to such shipowner.

G. 741, I. 664, P. 667. The Codes of Germany and Italy in words are limited to the case of a previous collision, causing a second; that of Portugal is in general terms as in this Code, and in principle agrees with the law of England in such cases. M. & P. 624; *The Thames*, 44, L.J. (Ad.) 23; *The Industry*, L.R. 3, A. & E. 303; *The Sisters*, 1 P.D. 117.

832. If in consequence of a hurricane or other unavoidable cause a vessel which is properly moored or anchored fouls vessels near her and does damage, the damage done will be considered as Particular Average on the vessel that is fouled.

This section appears to be only a special case of the general principle, already covered by the preceding Art. 830 (*q.v.*).

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There is a curious special provision in this case in Russia (R. 456, 457) and Holland (H. 560), by which in such case the vessel which drags or drifts bears her own damage and pays half to other vessels, and, what is even more remarkable, in Holland this half is assessed as General Average on ship and *cargo*.

833. A vessel which, after a collision, founders immediately, and also one which, being compelled to make for a port to repair the damage received in the collision, is lost on the way or is obliged to run ashore to save herself, is deemed to be lost in consequence of the collision.

G. 739, H. 539, P. 670, *The Mellona*, 3 W. Rob. 7.

834. If ships which come into collision have pilots on board performing their functions at the time of the collision, their presence does not exempt the captains from responsibility, but gives them a right to compensation from the pilots, without prejudice to any criminal liability incurred by the latter.

B. 228, G. 740, I. (M.M.C. 66, 107, 199-201), P. 672.

In case of voluntary pilotage the shipowner is always liable, with a remedy over against the pilot if he is at fault. In the case of Trinity House Pilots, this remedy over is limited to the amount of their bond, £100; in some countries, as Italy (I.M.M.C. 199), Portugal (P. 672), and Russia (R. 320), the remedy over goes beyond the pilot himself to the pilotage fund or local authorities, and see *Reney* v. *The Magistrates of Kirkcudbright*, 1892, A.C. 264.

Compulsory pilotage, *i.e.*, a defence to an action for damage by collision that the vessel at the time was under the control of a pilot by compulsion of law, and that, the relation of master and servant not existing between him and the shipowner, the shipowner cannot be held responsible for his acts of negligence, is a valid defence in England and Germany (G. 740), whilst by the law of Belgium (B. 228) (*The Halley*, L.R. 2 P.C. 204), and of France (*The Augusta*, 6 Asp. M.L. 58, 161), and in the Danube (*The Agnes Otto*, 12 P.D. 56), and Suez Canal (*The Guy Mannering*, 7 P.D. 132), under local regulations, it is no defence. The point appears to be that in the States where his presence is a defence, he supersedes the captain, and is in command; in those where it is no defence, he is merely an adviser; as to his position in Italy, see I. M.M.C. 201. In the United States it sometimes is, and sometimes is not, a defence, the test appearing to be that if the shipowner has a choice of selecting which pilot he likes from the general body, his employment, though compulsory, is no defence, whilst if the first one who appears must be employed, it is. See *Smith* v. *Cowdry*, 1 How. 28, *The China*, 7 Wallace 53, 67, *Law Times*, 14th May, 1881, Parsons on *Shipping*, vol. ii., p. 117. And though there is ground for saying that the owners of a damaged ship have always a remedy *in rem* against the other vessel

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when proceedings are *in personum*, the owners cannot claim exemption on the ground of compulsory pilotage unless they are subject to some penalty or punishment beyond the payment of the pilotage if they do not employ a pilot. (*The Creol*, 2 Wallace Jr. 516, *Busy* v. *Donaldson*, 4 Dallas 206, *Flanigan* v. *Insurance Co.*, 7 Barr 312. *Ex Pte. McNeal*, 13 Wallace 236.) It is difficult to distinguish the case of a pilot engaged specially to take a ship from Gravesend to sea, and selected from the whole body of pilots who have certificates or licenses, and that of a captain engaged specially to take a ship on her voyage, and who must be selected from those who have masters' certificates.

835. Actions for recovery of damages and losses arising out of collisions will be barred, unless a protest or declaration is presented within twenty-four hours before the proper authority of the port in which the collision occurs, or in the first port the vessel comes into if in Spain, or before the Spanish Consul if in a foreign country (see Art. 953).

This protest may in the case of a foreign ship be made before a Notary or Consul, 7 R.I.D.M. 603.

B. 232, 233, F. 436, G. 906 (2), 908 (3), H. 742, I. 665, P. 673, Sc. 283, E. 274, 275.

There is no corresponding provision to this in English Law, and, indeed, the ordinary Statutes of Limitation do not apply. See the *Kong Magnus* (1891, P. 223), where a claim sixteen years old was held not to be barred.

836. A default in making a protest does not prejudice those interested so far as personal injuries or damage done to cargo are concerned, when they were not on board the ship, or not in a condition to make their wishes known.

B. 231, I. 665, P. 673.

Though not expressed in the Code, this appears also to be the case in France (*Charles Quint* and *Ville de Brest*, 6 R.I.D.M. 35).

837. The civil liability incurred by shipowners in the cases mentioned in this section is understood to be limited to the value of the ship with all its appurtenances and freights earned on the voyage.

B. 7, F. 216, G. 452, 736, H. 321, I. 491, Sc. 222, E. 30, M.S.A. 503.

The general rule of Continental States is that the liability of owners for the acts of their captains is limited to the value of ship and freight, and can be cleared by abandoning them; this is also the law in the United States. In England, however, this liability is limited to a sum of £8 per ton in case of damage to property, and an additional £7 per ton where there is loss of life or personal injury. By the new Code of Portugal (P. 492) the liability of shipowners in case of collision appears to be unlimited.

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838. When the value of the vessel and its appurtenances does not suffice to cover the liabilities, compensation due for loss of life or personal injury will be entitled to priority.

I. 661. P. 673 (1) recognises claims for loss of life and personal injuries, and by the article here considered, Spain, like Italy, gives priority to such claims. It has been decided in England that where there is loss of life or personal injury, as well as damage to property, the life and personal injury claims have the exclusive benefit of the £7 per ton, the difference between £15 and £8, and then for the balance of the claim have an equal right to share in the remaining £8 per ton. *The Victoria*, 13 P.D. 125. See note to Art. 830 *ante*.

839. If there is a collision between Spanish ships in foreign waters, or if, after a collision on the high seas, the vessels arrive at a foreign port, the Spanish Consul in such port will institute a summary inquiry into the matter, and send the papers to the Captain-General of the nearest department for further prosecution and determination.

This provision is new. Protests and claims had to be made in the first port reached.

Section IV.

Shipwrecks.

840. The losses and depreciations that a ship and its cargo sustain in consequence of wreck or stranding will be at the separate account of the several owners, who will share in the same way in whatever is salved.

G. 703, I. 646 (1), P. 635 (2), 637.

841. If the wreck or stranding be caused by the default or want of care and skill of the captain, or if the vessel went to sea insufficiently repaired and equipped (*i.e.*, in an unseaworthy condition), the shipowner or shippers may demand compensation from the captain for injury done to the ship or cargo by the casualty, in conformity with what is laid down in Articles 610, 612, 614, and 621.

This is probably the law of all civilised States, even though not expressly stated, in the case of a master of a ship, that a person injured should obtain satisfaction, if he can get it, from the person injuring him; the more important question is how far the shipowner and the ship itself are liable for the acts of the master. See Arts. 587, 588, and 837 *ante*.

842. There is a special lien on property salved from a wreck for the payment of salvage, and its claim must be

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satisfied by the owners of the goods before they are delivered to them, and in priority to any other charge on them if they are sold (see Art. 952).

B. 3 (6), H. 313 (1), 566, G. 753, I.M.M.C. 133, P. 689, Sc. 229.

843. If several vessels are sailing on a joint undertaking (*en conserva*), and one of them is wrecked, the cargo that is salved will be divided amongst the rest in proportion to what each can take.

If any of the captains refuse without just cause to receive his share, the captain who has been wrecked will enter a protest against him before two maritime officials for all losses or injuries which may ensue, and extend the protest within twenty-four hours of his arrival at his first port, and include it in the proceedings which he must institute in accordance with the rules laid down in Art. 612.

If it is not possible to tranship all the wrecked cargo on to the other vessels, things of greatest value and least bulk, as pointed out by the captain in agreement with the officers of his vessel, will have priority in salvage.

844. A captain who has collected goods salved from a wreck will prosecute his voyage to his port of destination, and on his arrival will place them, under Judicial control, at the disposal of their lawful owners.

If the goods can be discharged in the port to which they are consigned by a deviation from the voyage, the captain may put in to that port, if the shippers and supercargoes who are present and the officers and passengers on board the ship consent; but he cannot justify so doing, even with such consent, in war time, or when the port is difficult or dangerous to approach.

All expenses of such putting into port will be on account of the owners of the cargo (so carried) as well as the payment of such freight as, having regard to the circumstances of the case, is fixed upon by agreement or Judicial decision.

This legalises, under certain restrictions, a deviation, not merely to save property, but to benefit salved property, contrary, in both cases, to the interests of the insurers. See *Scaramanga* v. *Stamp*, 5 C.P.D. 295.

845. If there is no one in the ship having an interest in the cargo who can satisfy the expenses and freights resulting

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from the salvage, a Judge or a Competent Court may order the sale of the portion necessary to satisfy them by its proceeds. Resort may be had to the same process where the preservation of the cargo is attended with danger, or when a year has elapsed without its lawful owners being ascertained.

In both cases the proceedings will be conducted with the publication and formalities ordered in Art. 579, and the proceeds of the sale will be placed on secure deposit, according to the judgment of the Judge or Court, to be handed over to its lawful owners.

This applies, in a roundabout way, the sweet simplicity of a suit *in rem* in the Admiralty Court in England, which is available in all cases of salvage, and which, if no one intervenes to protect his interest, results in a sale of the property and a payment out of the salvage award.

TIT. V.

Statement and Adjustment of Average Losses.

SECTION I.

Rules Applicable to every Class of Average.

ART. 846. Those who are interested in the proof and adjustment of Average losses may at any time agree and mutually contract among themselves as to their liabilities, and the adjustment and payment thereof.

In default of agreement, the following rules will be observed:—

(1.) The statement of the Average loss will be drawn up in the port in which the repairs are effected, if they were necessary, or in the port of discharge.

(2.) The adjustment will be made in the port of discharge if it is Spanish.

(3.) If the Average loss has happened in waters outside Spanish jurisdiction, or if the cargo has been sold in a foreign port of distress, the adjustment will be made in such port of distress.

(4.) If the Average loss has happened in the vicinity of the port of destination, so that the ship makes that port in distress, the measures referred to in clauses 1 and 2 (of this Article) will be taken in that port.

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The effect of this Article is to let in such arrangements as the York-Antwerp Rules.

B. 118, F. 414, G. 711, 729, H. 697, 722, I. 642, P. 650, Sc. 213.

Lowndes, 336, 249.

847. Both in the case where the adjustment of Average is privately made in virtue of an agreement, as well as in that where the Judicial authority intervenes, on the application of an interested party who does not agree, all parties must be summoned and heard unless they renounce their right.

When the parties interested are not present and have no legal representative, the adjustment will be made by the Consul in a foreign port, and where there is none, by the Judge or competent Court, in accordance with the laws of the country and on account of all whom it may concern.

When an agent is a person of repute in the place where the adjustment is made, his intervention will be allowed, and will be legal, although his only authority is a letter from the shipowner, shipper, or insurer.

B. 119, Sc. 214.

848. Claims for Average losses will not be admitted unless they exceed 5 per cent. of the interest which the claimant has in the ship or cargo, in the case of General Average, or 1 per cent. of the damaged property, in the case of Particular Average, deducting in both cases, unless otherwise agreed, the expenses of the adjustment.

F. 408, 1 per cent., E. 243, 1 per cent.

849. Damages, Average losses, Bottomry loans, and their premiums and other losses of whatsoever sort, do not carry interest for delay in payment until three days have elapsed, commencing from the day on which the adjustment was completed and communicated to those concerned in the ship, her cargo, or in both together.

850. If in consequence of one or several accidents of the sea on one and the same voyage, both General and Particular Average losses befall ship or cargo or both, the expenses and losses belonging to each Average loss will be ascertained separately in the port where the repairs are effected or the goods discharged, sold, or got into condition.

For this purpose, captains are bound to require from the

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surveyors who make estimates, and from the persons who carry out the repairs, as also from those who regulate or effect the discharge, conditioning, sale, or utilisation of the merchandise, that in their arrangements, estimates and accounts, they shall specify with precision and separately the damages and expenses belonging to each several Average act, and in those of each class of Average distinguish what belongs to ship and what to cargo, expressing also distinctly in each case whether the losses arise out of the inherent vice of the thing or from a peril of the sea; and in a case in which expenses are incurred common to different classes of Averages, and to ship and cargo, they must calculate what is the share of each and express it distinctly.

Sc. 202, 206.

SECTION II.

General Average Adjustment.

851. The statement, adjustment and distribution of General Average will be conducted privately at the instance of the Commander, when all parties concerned consent. For this purpose, the captain will, within forty-eight hours of the arrival of the vessel in port, call together all concerned to decide if the regulation and adjustment of General Average should be carried out by experts and Average Adjusters appointed by themselves; and if those who are concerned in the matter agree, it will be so done. If they cannot agree, the captain will have recourse to the Judge or proper Tribunal, which will be that of the port where the affair should be carried out, in accordance with the provisions of this Code, or, if in a foreign port, to the Spanish Consul, if there is one, and if not, to the local Authority (see Art. 846).

B. 118, 119, G. 729, H. 724, I. 658, Sc. 213, 214, E. 249.

852. If the captain fails to comply with the provisions of the preceding Article, the charterer or shippers can claim an adjustment without prejudice to any action that may lie to enforce compensation.

G. 730, P. 652.

853. The surveyors who are appointed, whether by the parties concerned or by the Judge or Court, after accepting the

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nomination, will proceed to survey the ship and investigate the necessary repairs; and will estimate the amount, distinguishing Average losses and damages from the consequence of inherent defects.

The surveyors will state whether the repairs can be carried out at once, or whether it is necessary to discharge cargo for further survey and repairs. With regard to cargo, if the damage is visible, it must be proved before delivery. If not visible when discharged, it may be proved subsequently, always provided that the proof is given within forty-eight hours of the discharge, without prejudice to such other evidence as the surveyors may think fit.

G. 711, I. 658, Sc. 196.

854. The valuation of the things which contribute to General Average and of those which share in it is subject to the following rules:—

(1.) Goods preserved which have to contribute to the payment of General Average are to be valued at the price current in the port of discharge, after deducting freight, duties and expenses of discharge, judging by the results of the survey, and having regard to their description in the Bills of Lading, unless otherwise agreed.

(2.) If the Average statement is made up in the port of departure, the value of goods shipped will be the invoice price, with the expenses of shipment added, except premiums of insurance.

(3.) Goods that are damaged are estimated at their actual value.

(4.) If the voyage is given up and the goods sold in a foreign port, without an Average adjustment being possible, the value of the goods in the port of distress, or the net produce of their sale, will be taken as the basis of contribution.

(5.) Goods, the loss of which gives rise to the General Average, will be valued at the price which similar goods fetch at the port of discharge, if their description and quality are shown in the Bill of Lading; if not, the invoice price at port of loading, adding

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thereto expenses and freight subsequently paid, will be taken as the basis.

(6.) Masts cut away, sails, cables, and other apparel of the ship expended for the safety of the ship, will be valued at current prices, deducting one-third as the difference between old and new. This deduction will not be made in the case of anchors and chains.

(7.) The ship will be estimated at its actual value in the state in which it is.

(8.) Fifty per cent. of the freight is deemed to be its contributory value.*

B. 107, 108, F. 402, G. 718-721, 723, H. 727-730, I. 647, 654-656, P. 636, 639, 647-649, R. 1093, Sc. 198, E. 250.

Lowndes, 38, 297, 305 *et seq.*

855. Goods laden on the ship's deck contribute to General Average if saved, but have no claim to contribution if they are lost in consequence of being jettisoned for the common safety, except where in coasting voyages the regulations of navigation permit them to be so carried. The same rule applies to goods on board, not appearing in Bills of Lading or ship's Inventory, as the case may be.

In any case the charterer and captain are answerable to shippers for damage sustained by goods laden on deck without their consent.†

B. 109, 20, F. 420, 421, 229, G. 710, H. 732, 735, I. 649, 650, P. 640, 641, R. 1086-1089, Sc. 190 (2), E. 255, 256.

Lowndes, 62, 92.

856. Provisions and ammunition for ship's use do not contribute to General Average, nor do the effects and clothes of the captain, officers, and crew. On the same principle the personal effects and clothes of shippers, supercargoes and passengers on board at the time of the jettison are excepted.

Moreover goods jettisoned do not contribute to the payment of General Averages which may happen on a subsequent and different occasion to the goods that are saved.

* The former Code gave full freight, less wages; but in practice the present rule was carried out.

† See, as to deck loading, Art. 612 (5) *ante*.

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B. 106, 113, F. 419, 425, G. 725, H. 731, I. 648, P. 639, § 2, Sc. 212, E. 254.

Lowndes, 325.

857. When the valuation of the goods that are saved and of those which are lost and cause the General Average is completed by the experts, and the repairs to the ship, if needed, have been effected, and the accounts for them passed by the parties concerned, or by the Judge or Court, all the papers will be sent to the Average adjuster (*liquidator*) for the purpose of settling the distribution of the Average.

B. 119.

858. For the purposes of the settlement, the Average adjuster will examine the captain's protest, comparing it, if necessary, with the log-book and all the contracts entered into by the parties concerned in the Average, estimates, reports of survey, and accounts for repairs executed. If, as a result of this examination, there appears to be any defect in the proceedings which may prejudice the rights of the parties concerned, or affect the liability of the captain, he will call the attention of the person interested to the matter, if it be possible, and in any case note it in the commencement of the Average statement.

He will then proceed to adjust the incidences of the Average, for which purpose he will settle :—

(1.) The capital liable to contribute, determined, as to the value of the cargo, in conformity with the rules laid down in Art. 854.

(2.) As to that of the ship, by the state it was in according to the reports of survey.

(3.) As to the freight, on 50 per cent., the other 50 per cent. being allowed for wages and provisions of the crew.

The amount of the General Average being determined according to the rules laid down in this Code, it will be distributed amongst the above values proportionally.

P. 639, 647-649, E. 250, 251.

859. Insurers of ship, freight, and cargo are bound to pay, in settlement of General Average, the amounts due from each of the said values respectively.

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860. If, notwithstanding a jettison of merchandise, or sacrifice of masts, cables, and ship's fittings, the vessel is lost whilst exposed to the same peril, there is no General Average.

The owners of goods which may be salved are not liable, in this case, to contribute to those jettisoned, lost or damaged.

B. 111, 113, F. 423, 425, G. 705, H. 734, I. 651, P. 642, E. 258.
Lowndes, 259 *et seq.*, 293.

861. If the vessel, after escaping the peril which caused the jettison, is lost by some subsequent accident in the course of her voyage, articles salved and remaining on board from the former peril, remain liable to contribute to that General Average, according to their value in the condition in which they are, after deducting salvage expenses.

B. 112, F. 424, H. 735, I. 651, P. 642, § 1, E. 259.
Lowndes, 259 *et seq.*, 293.

862. If, though the ship and cargo are temporarily preserved by the sacrifice of masts or other damage voluntarily done to the vessel for the purpose, goods are subsequently lost or stolen, the captain cannot demand a General Average contribution from shippers or consignees unless the loss is occasioned by the action of such owner or consignee.

B. 113, H. 736, I. 651, P. 642, § 3, E, 260.

863. If an owner of jettisoned goods recovers them after he has received compensation in General Average, he is bound to repay to the captain and those interested in the cargo the sums which he has received, deducting depreciation caused by the jettison, and salvage expenses. In this case, the sum returned will be apportioned between ship and those interested in cargo, in the same proportion as that in which they contributed to the General Average.

B. 115, F. 429, H. 739, I. 653, P. 646, Sc. 215, E. 266.

864. If the proprietor of jettisoned goods recovers them before he has claimed compensation (in General Average), he will not be liable to contribute to General Average which the cargo has sustained subsequent to the jettison.

G. 722, H. 740, P. 646, § 1.

865. The apportionment of General Average will not be effective in law, until it has been confirmed, or, failing that,

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has been approved by the Judge or Court after inspection of the statement, and hearing the interested parties themselves, or their representatives.

B. 119, H. 724, I. 658, E. 252.

866. When the adjustment is approved, it is the duty of the captain to carry out the apportionment, and he will be responsible to owners of goods under Average for losses that may ensue from his *laches* or negligence.

867. If the parties who are liable to contribute do not pay their *quota* within three days after demand, proceedings will be taken at the instance of the captain against the salved goods, so far as is necessary to obtain the amount due.

Sc. 216, E. 265.

868. If a party who is interested in the receipt of the goods will not give security to answer for his General Average contribution, the captain may detain a sufficient amount of goods till payment is guaranteed.

G. 733, H. 487, Sc. 216, E. 265.

Section III.

Settlement of Particular Average.

869. Surveyors nominated by the Judge or Court, or persons concerned, as the case may be, will proceed to survey and value such Averages in accordance with Arts. 853 and 854 (1-7), so far as the same are applicable.

End of Book III.

Book IV.

Tit. I.

[Omitted, as relating only to Bankruptcy and Insolvency, and Winding-up of Companies.]

Tit. II.

Prescriptions.

942. The periods fixed by this Code for the prosecutions of actions arising out of mercantile contracts are absolute, and cannot be extended.

I. 915. 916.

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943. Actions, for the commencement of which there is no term fixed by the Code, are regulated by the rules of Civil Law.

I. 917.

944. The running of the term for prescription is stopped by a claim, or any other species of Judicial demand against the debtor, by an acknowledgment of the debt, or by the renewal of the document on which the right of the creditor is based. It is not deemed to be stopped by a Judicial demand if the plaintiff abandons it or lets it drop, or if it is dismissed.

The term for prescription recommences, in case of an acknowledgment of debts, from the day on which it takes place, and in case of a renewal, from the date of the renewed document, and if that postpones the date for the performance of the contract, until it becomes due.

F. 434, I. 916, Sc. 286, E. 278.

945. The term of prescription for the liability of stock-brokers, shipbrokers, and ship-interpreters on contracts in which they intervene officially, is three years.

I. 917, 922.

946. An action against security given by brokers exists for six months, reckoning from the date of the receipt of State funds, documents of title, or funds entrusted to them for business purposes, except in cases of interruption or suspension mentioned in Art. 944 *supra*.

947. The term of prescription for actions by a partner against the partnership, or *vice versâ*, is three years, reckoned from the retirement or expulsion of the partner, or the dissolution of the partnership as the case may be.

To allow this term to run, the retirement of the partner, his expulsion, or the dissolution of the partnership, must be entered in the Mercantile Register. Similarly the term is five years, reckoned from the day a liquidation commences, for the right to receive dividends or payments accruing from the service or portion of capital or shares that each partner has in the business.

I. 919.

948. The term of prescription in the case of a partner

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who has retired or been expelled, established as laid down in the preceding Article, is not interrupted by Judicial proceedings taken against the partnership or against another partner.

The term of prescription in the case of a partner who is a member at the time of the dissolution of the partnership is not interrupted by Judicial proceedings against another partner, but it is by those taken against the liquidators.

I. 919.

949. The term of prescription for actions against managers and directors of companies and societies is four years, reckoning from the date at which, for any reason whatever, they ceased to act.

I. 919.

950. Actions on Bills of Exchange are limited to three years from the date they become due, whether protested or not.

The same rule applies to Promissory Notes and Commercial Payments, Cheques and Drafts, and other documents of exchange, and to dividends, and coupons which carry a liability to pay, and are issued in conformity with this Code.

I. 916, 919 (2).

951. Actions for the recovery of lighterage, freight, and charges connected with them, and for General Average contribution, are prescribed to those to whom the money is owing by the lapse of six months from the delivery of the goods.

The right to passage money is prescribed by the same time, counting from the date of the termination of the voyage or that on which the money became due.

B. 236, F. 433, G. 909, H. 741, 744, I. 923, 924, Sc. 283, E. 270, 271.

So far as General Average is concerned, this Article does not apply when the parties have mutually agreed to pay the *quota* as soon as the adjustment is settled.

Sub. Trib., Madrid, 18th August, 1885, 3 *R.I.D.M.* 227, 16 *J.D.I.P.* 144.

952. The term of prescription is one year for:—

(1.) Actions for work and labour, stores and goods or money supplied to fit out or provision vessels, or to maintain the crew, counting from the delivery of the goods or money, or the date agreed upon for

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payment, and from the rendering of the work and labour, unless agreed on for a specified time or voyage. If they were so agreed, the period for prescription begins to run from the termination of the voyage or the contract concerning them, and if there has been an interruption to this, from the final termination of the services.

(2.) Actions concerning the delivery of goods carried by land or sea, or for compensation for delay or damage to the goods carried, reckoning the term from the date of delivery of the goods at their destination, or from the day on which they ought to have been delivered by the terms of the contract. Actions for damages and defects will not lie if no proper protest or reservation was made at the time of the delivery of the several articles, or within the twenty-four hours following when the damages were not visible on the outside of the parcels received.

(3.) Actions for sale by Judicial process of ships or cargoes or goods carried by land or sea, as also those for guarding, warehousing, and preserving them, and for navigation, port and pilotage dues, and money payable for assistance, help, and salvage, reckoning from the day when the expenses were incurred and the assistance rendered, or from the termination of the preliminary inquiry [*expediente*], if such has been held.

B. 232, 234, 236, F. 433, G, 757, 906, H. 741, 742, I. 925, 926, Sc. 283, E. 270, 271.

953. Actions to recover compensation for collisions are prescribed by the lapse of two years from the casualty. Such actions will not lie unless the captain of the injured vessel or his representative has made a proper protest in the first port he reaches, in conformity with the 8th and 15th sections of Art. 612, as far as applicable.

B. 232, F. 435, G. 906, H. 742 (three years), I. 923 (one year), Sc. 283.

954. Actions arising out of bottomry loans or policies of insurance are prescribed by the lapse of three years, reckoned

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from the date at which the contracts are completed, or from that of the casualty out of which they arise.

B. 235, F. 432, G. 910, H. 743 (five years), 745, I. 924, Sc. 283, E. 269.

Tit. III.

955. In case of war, official declaration of the existence of an epidemic, or of a revolution, the Government may, with the consent of the Council of Ministers and the Cortes (Parliament), suspend the running of the terms mentioned in the Code as to their effect on mercantile affairs, and declare the districts and places where such suspension is to take effect, when it is not to be general to the whole realm.

H. 745, 747.

*** Elaborate instructions with regard to the registration of ships, in accordance with the provisions of Art. 573, are given by a Royal Decree, dated 21st December, 1885, of which the 4th section is specially devoted to the subject, and with regard to the fees and securities to be taken and given by Insurance Brokers and bail for ships by another, dated 31st December, in the same year, and for proceedings to apportion General Average and other legal matters connected with shipping, in the Law of Civil Procedure, dated 3rd February, 1881; but as the first two may be altered by the equivalent of an Order in Council, and the last is not as yet adapted to the New Code, it is not thought necessary to give translations of those portions of the Law.

Book I.*

Merchants and Commerce.

Tit. II.

The Commercial Registry.

Art. 16. In all capitals of provinces a Commercial Registry shall be opened, containing two separate sets of Books in which shall be entered:—

(1.) Private traders.

(2.) Companies.

In provinces on the sea coast and in the interior when suitable for navigation (*i.e.*, on rivers, etc.), the Registry will contain a third set of books for the entry of ships.

* Only those Articles of Book I. which concern Maritime Commerce are given.

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ART. 22. In the Register of ships are entered :—

(1.) The name of the ship, description of the rig, the description or power of the engines if a steamship, stating whether nominal or indicated horsepower, the place where hull and engines were constructed and the year; the material of the hull, stating if of wood, iron, steel, or composition; the principal dimensions from stem to sternpost; greatest beam and depth of hold, gross and net tonnage, and distinguishing signal in the International Code of Signals, and lastly the names and residences of the owners and part-owners.

(2.) Changes in the ownership of ships in its description or in any of the other particulars mentioned in the preceding paragraph.

(3.) The imposition, alteration and cancellation of charges of any sort for which the ship is liable.

ART. 23. An entry is proved, in ordinary cases, of notarially attested copies of the entries produced by the person interested.

ART. 26. Documents which are entered only prove effect as against third parties for the date of entry, except that they may affect other unregistered documents either prior or posterior in date (see Art. 578 *ante*).

ART. 30. The Mercantile Register is public. The Registrar will give facilities to all who seek notices referring to what appears in its pages of the entries of each trader, company or ship. The same person will forward a sworn copy of the whole or a portion of such a page to any one requiring it in writing.

A provision decree of 21st December, 1885, gives regulations as to the actual method of keeping those books of which Chap. III., § 4, relates, more particularly to ships, but it has not been considered necessary to encumber this small book with them as they are matters which no foreigner would care to go into without the advice and assistance of a native broker or a lawyer.

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TIT. V.

Public Offices and Places for Business.

SECTION I.

Public Exchanges (Bolsos de Comercio).

ART. 64. Public establishments legally authorised and in which customarily merchants and duly qualified brokers assemble to undertake and carry out the mercantile affairs enumerated in that section are called Exchanges (*Bolsos de Comercio*).

67. The following contracts are made in the Exchange :—

(6) Insurances of commercial property against land and sea risks.

(7) Freights and carriage, Bills of Lading and delivery orders.

TIT. VI.

Brokers and their Duties.

SECTION I.

Regulations Common to all Brokers.

ART. 88. The following persons are subject to the mercantile laws as brokers, *inter alia* :—

Interpreting Shipbrokers.

89. All persons whether Spaniards or foreigners and of any class may act as Exchange agents and brokers, but only those who are associated (*colegiados*) are officially recognised. The proof of deeds and contracts negotiated by unassociated brokers is subject to the ordinary rules of law for proving contracts.

90. In every Commercial City there shall be an Association (*Colegio*) of Exchange Agents, another of Commercial Brokers, and in maritime places another of Interpreting Shipbrokers.

91. The Association mentioned in the preceding Article will be composed of those persons who are duly qualified in accordance with the provisions of this Code.

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92. At the head of each Association there shall be a Committee elected by the associates.

93. The associates have the character of notaries in relation to their own business in their own place of business, and have to keep books in a particular form.

They must keep a register in accordance with Art. 36 (*i.e.*, in a certain official form with numbered pages, etc.), in which they will enter daily and separately every transaction they engage in, and may keep other books in the same form.

The Books and Policies of associates are taken Judicial notice of.

94. It is necessary for entrance into any of the Associations :—

(1.) To be a Spaniard or naturalised foreigner.

(2.) To be of full legal capacity in accordance with this Code.

(3.) Not to have been sentenced to imprisonment or corporal punishment.

(4.) To be vouched by a Judicial deposition of three registered traders to be of good moral character and of known honesty.

(5.) To deposit in a bank such security as the Government orders.

(6.) To obtain from the Minister of the Department a license, after having received one from the Committee of the particular Association.

Section IV.

Associated Interpreting Shipbrokers.

112. To execute the office of an interpreting shipbroker it is necessary not only to possess the qualifications required by Art. 94, but also to show either by examination or by a certificate from a public educational establishment, a knowledge of living foreign languages.

113. The duties of interpreting shipbrokers are :—

(1.) To negotiate charter-parties, policies, of marine insurance and bottomry bonds when called upon.

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(2.) To assist captains and supercargoes of foreign ships and to act as interpreters, in making depositions, protests and other matters that may arise in Courts and Public Offices.

(3.) To translate documents that the above-mentioned foreign captains and supercargoes have to produce in such offices, and whenever any doubt exists as to their meaning to certify that he has made the translation well and faithfully.

(4.) To represent the shipowner and consignee in legal matters when they cannot appear themselves.

114. It is also the duty of interpreting shipbrokers to keep:—

(1.) A book containing copies of the translations they make entered literally.

(2.) A register of the names of the captains to whom they have given official assistance, stating the flag, name, description and burthen of the ship, and the ports from which it came and to which it was bound.

(3.) A day book of charter-parties negotiated, stating in each entry the name of the ship, its flag, home port and burthen, the names of the captain and charterer, the rate and place of payment of the freight, money in which it is to be paid, advances if any, the goods of which the cargo is composed, conditions agreed as between captain and charterer as to lay days, and the time agreed upon for commencing and completing the loading.

115. An interpreting shipbroker keeps a copy of the contract or contracts which he has negotiated between captain and charterer.

The existing law as to Emigrant Ships is contained in a Royal Decree of 8th January, 1890. *As this regulation may be altered without the concurrence to Cortes it is not set out in full. What follows is an abstract of it.*

ART. 1. Applies the regulation to all vessels, whether Spanish or foreign, bound to Spanish ports beyond the sea, or on any ocean voyage, and requires passengers to be berthed in properly enclosed cabins on deck or between decks, having a minimum height of 1 m. 60 = 5 ft. 4 in. about.

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2. Gives 2·25 cubic metres = 81 cubic feet for each adult passenger (over ten years). If there is an artificial ventilating apparatus 1 – % more passengers are allowed, and if lit with electric light 5 – % more, and if provided with sufficient life-saving apparatus for all passengers and crew 10 – % more.

3. Allows cargo, provisions and non-inflammable stores if without smell to be carried in unoccupied passenger space if properly separated.

4. Each third class passenger or emigrant must be supplied with a wooden bunk, a hammock or other bed place, 1 m. 83 = 5 ft. 7½ in. long, m. 50 = 1 ft. 7½ in. broad, two children under ten occupy one berth, and those under two share their mother's berth.

5. The quarters of the third class passengers and emigrants must have hatches opening direct into them, the hatches and ventilators must give 3 – % more air to the passenger space; if not, the number of passengers must be reduced by $\frac{1}{10}$th.

6. Any space occupied by twenty-five to a hundred passengers must have at least one metal ventilator; between a hundred and two hundred passengers, two, and above that number, four. The ventilators must be m. 20 = 6½ in. in diameter and reach at least 2 m. = 6 ft. 6 in. above the deck.

7. The ships must be provided with awnings to protect from sun and rain.

8. Hatchways to the hold must always be kept closed during the voyage, and if necessary to open them on arrival in port or on the voyage, they must be protected with rails, to prevent the possibility of any one falling into the hold.

9. A clear space, at least m. 70 = 2 ft. 4 in., must be kept round each bed and each hatchway, and all passenger spaces must be lighted at night.

10. If there are not more than a hundred passengers, they must have one space set apart for meeting and walking, and an additional one for each hundred passengers more, but not exceeding twelve in all, taking care that the women do not have more than their fair share according to their numbers.

11. Unless the number of passengers and crew is ex-

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ceptionally small, vessels under 200 tons must have two boats; between 200 and 400 tons, three; 400 to 600 tons, four; 600 to 1000 tons, five; 1000 to 1500 tons, six; above 1500 tons, seven.

In addition vessels under 600 tons must have one, and vessels over, two lifeboats; also, the vessels must have on board lifebuoys and lifebelts enough for all the passengers and crew; also, each ship must have one or two fire-engines on board, according to whether it is under or above 600 tons, and twenty-four hand fire-extinguishers.

12. There must be a hospital (sick bay) properly furnished with beds, and well lighted and ventilated. There must only be two tiers of bunks, and 3 cubic metres = 108 cubic feet of space for each sick person.

The hospital must be on the highest covered-in deck, or in a house on deck, and one bed for each fifty passengers must be supplied. Care must be taken, especially in emigrant ships, to carry a priest, a doctor and a medical student, and to have a surgery well provided with medicines.

13. The passenger spaces must be washed and disinfected, and must be whitewashed and painted each voyage.

14. The messing of a third class passenger or emigrant is a matter of arrangement with the ship, but he is entitled to three meals a day. Ship must be provided with provisions in accordance with the Government scale. Water must be carried at the rate of 4 litres = 7 pints per man per day, half of which must be kept in iron tanks.

Steamers with distilling apparatus may carry $\frac{1}{3}$ less.

Children under four must have eggs and warm condensed milk.

15. Separate spaces must be provided for men and women; but families, if large, may be berthed together, separate from the single men and women.

16. Ships specially adapted for passengers, as regards accommodation, ventilation, etc., and means of saving life, may be exempted from these regulations.

Ships already built, and which would require extraordinary alterations to comply with this regulation, may be excused.

17. These regulations apply equally to ships homeward bound from beyond the seas.

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The Law of Mortgage of Ships. 21*st August*, 1893.

1. Merchant vessels may be mortgaged in accordance with the provisions of this law.

In this respect ships will be deemed to be real property, Art. 585 of the Commercial Code now in force being modified to this effect.

B. Tit. V., F. (1885), P. 585.

2. A maritime mortgage may be given in favour of a specific person or to his order. In either case the transfer of the mortgage will be regulated by the general rules of law applicable to it.

Nevertheless every endorsement of a maritime mortgage must be entered on the Commercial Register, to enable those who have obtained the mortgage by this means to obtain payment, in accordance with the procedure established by this law.

3. Every contract purporting to be a mortgage of a ship must be drawn up:—

(1.) In a public deed, or

(2.) By a memorandum of an Exchange or Stockbroker,* or of a Commercial Interpreting Shipbroker * and signed by the contracting parties or their agents, or

(3.) By a private deed signed by the parties concerned or their agents and delivered by both, or at all events by the person granting the mortgage, to the official whose business it is to enter it on the register, before whom the parties must prove their identity.

P. 588.

4. Only those persons who have the free disposition of their property, or who, not having such free disposition, are authorised so to do by legal means, can grant a mortgage. Those who in accordance with the preceding paragraph can grant a mortgage, can either do so themselves or through an agent specially authorised to make this species of contract. Such authority must be given by a deed executed before a notary public or an officially recognised commercial agent.*

P. 586.

* The various classes of brokers or agents frequently referred to in the following articles have in Spain a well-defined legal position, and in

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5. If a ship belongs to two or more persons, the previous consent of all or of the majority of the owners is necessary. This majority must be calculated in conformity with the rule laid down in Art. 589 of the Commercial Code. The manager or ship's husband nominated in conformity with Art. 594 of the Code may grant a mortgage if he has been specially authorised so to do by the co-owners in the manner prescribed in Art. 589 above referred to. A mortgage of a ship whilst building may be granted by the builder.* The person for whom it is being built * may also grant it if specially permitted so to do by the building contract.

P. 586, 587.

6. Every contract purporting to be a mortgage of a ship must state :—

(1.) The Christian and surnames, status, profession and domicile of the lender and borrower.

(2.) The liquidated amount of the loan secured by the mortgage and the amount beyond in consequence of expenses and interest for the space of two years beyond the current year covered by it.

(3.) The date at which repayment of the capital and interest are due, and all other terms of the agreement between the parties relating to the interest or insurances or which exclude any appurtenances of the ship from the effect of the mortgage.

(4.) A statement whether the mortgage is to order or only to a specially named person (*i.e.*, not negotiable).

(5.) The name and distinguishing characteristics of the ship, and a complete description of her, and the order and date of her entry on the Maritime Register

many respects can and do act as notaries (see as to Shipbrokers, *ante*, p. 106, Book I. Tit. VI.).

* The words translated builder and the person for whom it is being built are literally the "owner" and the "fitter out". By Spanish law, in the absence of any special contract the property in the ship would not pass from the builder prior to delivery, and the "armator" or person fitting out the ship would in any case be the one for whom it is being built. It is therefore thought that the words used convey the sense better than a more literal translation.

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and her certificate of Registration. If the mortgaged ship is still in process of building, the condition laid down by Art. 16 for its registration must be complied with.

(6.) The value or estimate of value of the vessel at the time the mortgage is given, if in conformity with Art. 46 the creditor and debtor have agreed in the contract that such estimate shall be taken as the basis of the transaction.

(7.) The amount for which each ship is security when two or more vessels are mortgaged as security for one and the same loan.

7. The apparel and furniture, stores, and engines if the ship is a steam vessel, which are in the possession of the owners at the time the mortgage is effected, are deemed to be covered by the mortgage at the same time as the hull of the ship and bound by the conditions attached to the mortgage unless the contrary is expressly stated, as also freights earned but not received for a voyage actually in progress or for the last voyage which the loan has assisted to complete, compensation due to the ship for collision, damage or other casualties which may have happened, or from insurances in case of loss.

8. If it is agreed that the Insurance should be included in the mortgage, or if in conformity with Art. 7 nothing has been agreed on this point, a creditor holding a ship mortgage can at any time give notice of his mortgage to the Insurance Company or Companies through a notary or exchange or stockbroker or a commercial or interpreting shipbroker.

A Company to which such notice is given cannot pay over any moneys to the owners or ship's husband without the assent and express consent of the lender.

P. 594.

9. If Insurance in case of loss has been expressly excluded from the mortgage, the debtor is free to insure the property in the ship and the creditor his mortgage, in conformity with the rules of the Commercial Code, provided that the total amount insured on both together does not exceed

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the value of the ship insured, which must be calculated for this purpose as stated in the Commercial Code.

If this value is exceeded, and if in consequence the insurance is reduced, the reduction will be made in the first instance from the owner and afterwards from the mortgage.

P. 594.

10. A ship mortgage given as security for a loan bearing interest, covers, as against third parties, over and above the capital, interest for two whole years elapsed and the current year.

P. 598.

11. When several vessels are mortgaged at one time for one loan, the portion of the security which is given on each must be stated.

12. When in accordance with the preceding article the amount secured in each ship is entered in the register, then, as against third parties whose claims are also registered, only this sum and the interest pertaining to it can be claimed against each ship.

13. The provisions of the preceding article do not, if the mortgage does not suffice to cover the whole loan, prevent the mortgagee from recovering the balance against the ships which the mortgagee retains, but this right can only be enforced by a personal action, and confers no preference beyond that given by the general principles of the Commercial Code.

14. A ship mortgage to be legally effective must be entered on the Commercial Register of the province in which the ship which is mortgaged is Registered, or that of the place in which she is built if she is not Registered.

It must also be entered by the Registrar on the Certificate of Registration proving the ownership of the vessel, and which the commander must have on board in accordance with Art. 612 of the Commercial Code; non-production of this document is a sufficient reason for refusing registration. Except that where the owner proves that the ship is on a voyage the notation above-mentioned may be dispensed with, but must be made directly the ship returns. It must be expressly stated in the entry in the Commercial Register if the annotation

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referred to above has been made, or if on the contrary it has been omitted, and if so for what reason.

P. 590.

15. The first entry of a ship is the entry of ownership. It will state the matters mentioned in Art. 22 of the Commercial Code. Default in this matter is a sufficient reason for refusing any other entry until it has been done at the request of some one who has a legal right.

The entry of the ownership of a vessel will be made on the Commercial Register, on presentation of a certified copy of the ship's Register or of the papers given by the Marine Commandant of the province to which the ship belongs.

If the ship is to belong to a place which is on a different Register from the place where she was built, the Registrar will require a certified copy of the Register from the place where she was built. The same rule applies if the ship's home port or registration is changed after she has been entered or registered for navigation.

Art. 22 of the Commercial Code is set out *ante*, p. 107.

16. Before a mortgage can be given on a ship in process of building one third at least of the total estimated value of the hull must have been expended upon it.

Before giving a mortgage of this nature, an entry of the ownership of the vessel which is to be mortgaged must also be made on the Register of Ships of the province in which the ship is built. For this purpose the builder or the person for whom the ship is built will produce a request for Registration, accompanied by a certificate of a shipbuilder, stating how far the building has progressed, the length of the ship's keel and her other dimensions, her tonnage and probable displacement, whether she is a sailing or steam vessel, the place where she is built, what she is built of, the price of the hull and a plan of the ship. If she is built on contract, the contract must be entered from a copy certified by the builder or person for whom she is built.

To carry out the provisions of the preceding paragraphs, a special section will be opened on the Register of Ships for the entry of deeds and contracts relating to ships which are being built.

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The entry of ownership of a vessel which is in course of construction will be provisional, so that when she is completed she may have her home port assigned in the Register of the province. When this is done the above entry will be made permanent in the manner prescribed by the Regulations.

Sc. 3.

17. If the contract of mortgage is made in a foreign country it must, to give it legal effect under the present law, be made before the Spanish Consul of the port in which it is effected, and must also be entered in the Consular Register and noted in the certificate of ownership which the commander is bound to have with him in conformity with Art. 612 of the Commercial Code. The Spanish Consul will at once forward an office copy of the contract to the Commercial Registry of the ship's home port. The Registrar, on receipt of the copy, must make the entry of it on the Register. The same form must be complied with in respect to other contracts made in foreign countries and which have a right to priority over mortgages in virtue of being entered on the Commercial Register.

18. It is necessary that unpaid purchase money when the ship is sold and debts due for repairs should be recorded on the Commercial Register to give them priority over mortgages of ships.

19. To enable a debt for purchase money of a ship payable at a fixed date to be entered on the Commercial Register and produce the effect referred to in the preceding article, it is further necessary that the contract should state the purchase money at a definite liquidated amount, the date of payment, the agreed rate of interest if any, and the other conditions on which the term is granted.

20. To enable a debt for repairs to the ship to be entered on the Commercial Register and produce the effect referred to in Art. 18, the creditor must produce to the Registrar of Ships a written contract with the debtor vouched in whatever way it may be to advance at one or more times moneys for the building or repairing of the ship.

Such an entry will have the same effect as a mortgage.

21. It is not necessary that the documents on the strength of which registration of debts due for repairs executed upon

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a ship should state precisely the amount of money or materials from which such debts are made up, it is sufficient if they contain information which will enable the accounts to be made up when the repairs are completed.

22. If a ship which is to be repaired is already affected by a duly registered mortgage, the registration of the debt can only be made when mortgagor and mortgagee agree by a public deed, or their agreement is shown by the memorandum of an exchange or stockbroker or an interpreting shipbroker, such agreement being directed to the subject of the repairs and the value of the ship before they commence, or failing an agreement, by a provisional decree stating such value in a proceeding instituted for the purpose and in which previous mortgagees have been cited and heard.

The value of the vessel before the repairs are commenced, arrived at by one or other of these methods, must be stated in the registration of a debt for repairs.

23. A creditor who has a mortgage on the repaired ship, the value of which has been arrived at in the way laid down in the preceding articles, will preserve his priority over the creditor who has done the work, but only as far as the value of the ship thus ascertained prior to the repairs goes.

24. Every entry or note on the Commercial Register must give the day and hour at which it is made as well as the day and hour at which the documents were drawn up; it must also state if the entry or note is in conformity with the documents on which they are based, stating the file corresponding to the register, where copies of them are placed, and if they have been entered on the certificate of ownership that the commander is bound to have on board, and, if not, the reason why.

25. The registration of a ship mortgage must contain all the particulars set out in Art. 6 of the present law.

The registration of a debt for purchase money payable at a future date will show the place, day, month, and year of the contract, the Christian and surnames, domiciles, and status of the purchaser and vendor. The price of the ship, the amount paid down and that for which credit is given in definite and liquidated sums, the date at which payment is to be made, the

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amount of interest if any, and the other stipulations of the contract.

26. The registration of a debt for repairs will show the place, day, month, and year of the contract, and whether the document by which the orders have been given is a public or a private deed. The Christian and surnames, domicile and status of the persons contracting. The estimated value of the ship before the repairs are commenced if the value can be accurately assessed. The amount expended or to be expended on the repairs, or information to enable it to be ascertained when the repairs are completed, and the dates at which payments have been or ought to be made.

Any other stipulations as to the repairs.

Documents showing the amounts paid off.

27. To enable a loan, unpaid purchase money or a debt for repairs to be registered, all documents necessary for registration or annotation must be produced at the Registry. If any one of these documents is wanting it may be supplied by a duplicate signed by the parties.

A copy of documents on the strength of which registration has been made will be retained in the Registry and will be certified as a true copy by the Registrar. If documents which are wanting are replaced by attested copies signed by the parties, one of the duplicates will remain attached to the register.

28. A ship mortgage binds the ship on which it is given directly and at once as security for the debt in respect of which it is given whoever may be in possession of the ship.

29. A ship mortgage remains intact on the whole ship until it is cleared off, even if the secured debt is reduced, and on every part of the ship which remains in existence, even if the rest has been destroyed.

P. 594.

30. No entry will be made in the Register of Ships unless it is shown that the duties now in force or which may be in force by law have been paid if the deed or contract is liable to them.

Nevertheless a note may be made of the production of the document prior to the payment of the duty, but in this case

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the registration will be postponed and the document restored to the person producing it to enable him to pay the above-mentioned duty. When the duty is paid the person concerned will return and present his document at the Registry and the registration will take place.

31. The following claims have priority over a ship mortgage without being registered or noted in the Commercial Register :—

(1.) Taxes or duties, due from the ship to the kingdom, the province or the commune, during its last voyage or the previous year.

(2.) Pilotage, tonnage, light and other harbour dues, and the wages of the commander and crew earned during the last voyage.

(3.) Insurance premiums for two years preceding, and if the insurance is mutual, for the period covered by the two last dividends.

(4.) The debts to which Art. 580 (7) and (10) refers.

P. 592.

32. The following claims also have priority over mortgages of ships provided the conditions laid down in the following articles have been fulfilled :—

(1.) Moneys borrowed on bottomry by the commander of the ship during the last voyage.

(2.) General Average contributions payable by the ship in respect of the last voyage.

(3.) Debts for repairs ordered by the commander during the last voyage.

(4.) Judgment debts which previous to the registration of the mortgage have been entered on the Register by an order of Court, rendering them capable of execution, or by an arrangement consented to or approved of by all parties concerned.

P. 592.

33. A loan on bottomry will only enjoy the priority granted by the preceding article when made in the circumstances specially provided for by Art. 611 of the Commercial Code, and when all the formalities decreed by Art. 583 of the said Code have been complied with.

The provisional entry, which in conformity with the latter

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article must be made by a Judge or Court, a Consul or local authority, on the certificate of registry which the commander must have on board in conformity with Art. 612, will keep alive the priority until the vessel returns to the port of departure. When the vessel has returned the shipowner or commander must produce the certificate of registry so that the loan may be entered on the Commercial Register within forty-eight hours after the ship has got pratique. If the port to which the ship returns is not within the Registry of the ship's home port, the certificate must be produced within the same period to a Judge or local or maritime authority, who must verify the production of the document and forward it to the Registry of the ship's home port. If the certificate is produced within the time above-mentioned registration will preserve the right of priority granted by the preceding article, and all the legal effects of registration will date from the day on which the provisional entry on the ship's certificate of Registry was made. If the certificate is not produced until after the limited time has expired, it has legal operation only from the date of registration on the Commercial Register.

With the limitation of the duties that this article lays on the ship's husband or commander, the lenders or their agents authorised to do so may demand the registration of the loan.

34. To enable General Average contributions due from the ship during the last voyage to retain the right of priority given by Art. 32 it is necessary :—

(1.) That the provisions of Arts. 813 and 814 of the Commercial Code have been complied with.

(2.) That the expenses incurred and losses sustained are General Average.

(3.) That the Average Statement has been drawn up under the auspices of Spanish authority, if the putting into a port of refuge or the discharge has taken place in a Spanish port, or if in a foreign country under the auspices of the Consular authority, if there is one, or failing him, under that of the local authority. The verification of these facts will be stated on the certificate of registry which the commander has on board.

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(4.) That the Average adjustment has been made in conformity with the provisions of the Commercial Code, and the result of it recorded in the said certificate of registration.

If the adjustment is made in a Spanish port where the person to whom the payment is due is resident, he will be summoned to attend the adjustment; but he will only have a right to oppose it if in his opinion it has not been carried out legally; if he does not oppose he will be deemed to accept the adjustment of the loss and will lose his right to oppose it.

The provisional entry of the average statement at the place of the adjustment will have full legal effect as regards giving priority until the ship returns to her port of departure, the provisions of the third and fourth paragraphs of the preceding article being then applicable.

35. To enable debts contracted by the commander for necessaries during the last voyage to retain the right to priority given by Art. 32 it is necessary:—

(1.) That the repairs to the ship have been effected under circumstances provided for by the sixth paragraph of Art. 610 of the Commercial Code and with the consent therein mentioned.

(2.) That in carrying out the repairs and contracting the debts that they have necessitated, the provisions of Art. 583 of the said Code have been complied with.

(3.) That the provisional entry required by the said Art. 583 has been made.

The provisional entry will have full legal force as regards giving priority until the ship returns to her port of departure, when all the provisions of the third and fourth paragraphs of Art. 33 are applicable.

Debts due for repairs which do not come within this article are governed by the provisions of Arts. 20, 21, 22, 23 and 36 of this law.

36. No debt except those enumerated in Art. 31 will have a right of priority over a ship mortgage unless entered on the proper Commercial Register.

A married woman has no right of priority as against debts

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or claims of third parties duly entered or noted against the ship, even if her separate personal estate or legal claims are entered on the Merchants' Book in the Commercial Registry, unless she has an express mortgage on the same ship or unless she obtains one by ordinary law. Such mortgage will be effective after it is entered on the Register of Ships in the manner prescribed by this law.

Deeds and contracts relating to a ship which in accordance with this law and the Commercial Code are to be entered on the Commercial Register, are only effective against third parties from the date of entry, saving the provision of Art. 32.

37. The date of entry so far as its legal effect is concerned is deemed to be the day on which the document to be entered is produced, which date should be stated in the entry itself.

38. As between two or more entries against the same ship on the same day, those respective priorities will be decided by the time at which they were produced for registration.

P. 592.

39. A mortgagee of a ship may enforce his claim against the ship or ships which are covered by the mortgage in the following cases :—

(1.) When the time fixed for repayment has expired.

(2.) When the time fixed for payment of interest has expired.

(3.) When the mortgagee has been declared bankrupt or insolvent.

(4.) When any of the mortgaged ships has been condemned as unseaworthy.

(5.) When the ship is sold to a foreigner.

(6.) When the conditions of the contract of loan and all such matters as allow the capital and interest to be due have been fulfilled.

(7.) When one of the mortgaged ships is lost unless otherwise agreed.

In the cases provided for by (4) and (7) the creditor can only demand payment of the amount secured on the vessel which is condemned or lost, unless otherwise agreed (see Art. 6 (7) *ante*).

40. Mortgaged vessels cannot be transferred to a foreigner

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without the consent of the mortgagee, or unless the vendor has previously placed the sum secured by the mortgage on deposit in the manner prescribed by Arts. 1177-1180 of the Civil Code.

A sale carried out in contravention of the provisions of the preceding paragraph will be null, and the vendor will be liable to punishment in accordance with Art. 547 of the Penal Code.

The Civil Code Art. 1177 requires notice of the deposit to be given to creditor, and that it must be in exact accordance with the terms of payment; Art. 1178, that the deposit must be in charge of the Judicial authority; Art. 1179, that the costs are to be paid by the creditor when the deposit is properly made; Art. 1180, that the debtor may claim a judgment annulling the debt, and until either the creditor has accepted payment, or the judge made an order annulling the debt, the debtor may not withdraw the deposit.

The Penal Code Art. 547 decrees, as a punishment for fraud as to character, quantity or quality of goods sold, three different classes of imprisonment according to the amount of the fraud.

41. If the mortgage loan, or a part of it, or the interest on it is not paid when due, the mortgagee can summon the mortgagor to repay the debt, either by legal process, or through a notary, a stock or exchange broker, or a ship-broker, or interpreter, in the place of domicile fixed or chosen for the purpose in the mortgage. If the mortgagor has changed his domicile, the summons will be made in the place where he is settled, if he has given notice to the mortgagee. If the mortgagor has changed his domicile and cannot be found there, the summons will be given in that place and a copy left with his servants if he has any, if not, with his wife or children, and failing them, with a neighbour whose house is open.

42. If the mortgagor, summoned in one of the ways provided for in the preceding article, does not pay the debt in full within three days, the mortgagee may claim an order from the proper judge for the payment of the money due, and the arrest of the ship or ships which were mortgaged.

43. When the debt is proved to the satisfaction of the judge by production of the mortgage, if registered, and the

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default in payment by production of the summons, he will allow the ship or ships that are mortgaged to be arrested, and will order a sale in the method prescribed by the Code of Civil Procedure for the sale of real property if the claim of the mortgagee is based on Art. 39 (1) and (2) of this law.

44. If the mortgagee's claim is based on Art. 39 (6) or (7) or on (3), (4) or (5) of the same article, and is not supported by the documents referred to in the preceding article, the case must be conducted in conformity with the methods of the Code of Civil Procedure and the decree will be executed in the way prescribed by the said Code for the sequestration of real property.

45. Notwithstanding the provisions of Art. 42 of this law, the arrest of the ship is of no avail when at the time she is laden and ready for sea if any of the parties concerned gives bail to the satisfaction of the judge that the ship shall return within a fixed time, and undertaking if she does not do so, even by accident, to pay the debt. But notice must always be given to the commander or ship's husband of the ship or their representatives that the ship must come back to the port at the end of the voyage on which she sails to be subject to arrest.

46. When so agreed in the mortgage, the price therein put on the vessel will be taken as the lowest offer if the mortgagee demands it. If he does not demand it the price will be settled by experts in the way prescribed by the Code of Civil Procedure.

47. If the mortgage is on a ship in process of building, in spite of the arrest and at the option of the mortgagee, either the part which is built may be sold by public auction or may be taken in payment of the debt, at a price fixed by experts nominated in accordance with the provisions of the Code of Civil Procedure in questions of sequestration. If the value of the part which is built is less than the debt, the balance is deemed to be a pure personal liability. If the value of the ship is greater, the mortgagee must place the excess on deposit within three days of judgment.

48. The following persons have jurisdiction over actions

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on a mortgage of ships at the option of the plaintiff, unless there is an express or tacit agreement on the subject :—

(1.) The judge of the place where the mortgage was given.

(2.) The judge of the port where the ship may be.

(3.) The judge of the place where the defendant resides.

(4.) The judge of the place where the mortgage is registered.

49. An action on a ship mortgage is barred by the lapse of ten years, counting from the day in which it might have been commenced in conformity with this law.

P. 593.

50. Entries on the Register of mortgages of ships can only be struck out :—

(1.) By the consent of the mortgagee or his representatives formally given by deed or deposition before a notary by the memorandum of a Stock or Exchange Broker, a Commercial Broker or Interpreting Shipbroker, or by the personal appearance of the mortgagee or his delegate before the registrar who is satisfied as to his identity.

(2.) In consequence of a decree or final judgment.

Interlocutory injunctions will be struck out where in consequence of a final judgment the claims in respect of which they were made are withdrawn or void; when the claim is affirmed and become executory the note will be changed to an entry which will take effect from the date of the note. Every interlocutory injunction, and every entry into which it has been changed, and every cancellation made on the Register, will be noted as soon as possible in the certificate of Registry which the captain has on board.

When cancelling an entry, the time, day, month and year when it is done, must be stated, and also the document in the strength of which it is done.

51. When the owner of a ship which is sold has been declared insolvent, debts secured by a Ship Mortgage, as also those which have priority over them in accordance with the provisions of this law, are deemed to be included in Art. 1923 of the Civil Code.

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If he has been declared bankrupt these debts are deemed to be included in Art. 914 of the Code of Commerce.

The Civil Code, Art. 1923, As regards fixtures and real property of a debtor claims rank as follows:—

(1.) Taxes for one year in arrears.
(2.) Premiums of Insurance for two years.
(3.) Mortgages and Repairs duly noted and entered on the Property Register which have been effected on the mortgaged property.
(4.) Costs of execution.
(5.) Repairs not noted or registered.

The Commercial Code, Art. 914, Creditors of the second class (those who are granted priority by the Code, Art. 913 (2)) rank as follows:—

(1.) Those who have real security as defined by the law of mortgage.
(2.) Those who hold a special privilege, and others mentioned in the preceding article in the order there laid down.

52. Relates only to the fees of the Registrar and is provisional only.

53. All other laws and other provisions made prior to this law and not consistent with it are repealed.

Additional Articles.

1. Credit Banks hereafter constituted which propose either exclusively or as a branch of their business to advance money on mortgages of ships may issue bonds (*cedulas*) or debentures of maritime mortgage.

Credit Banks now in existence which have given notice that loans on ships in conformity with the provisions of Art. 175 of the Commercial Code is a branch of their business, cannot issue bonds and debentures of maritime mortgage unless they can amend their Articles of Association, and unless they register the Amended Articles at the Commercial Registry in accordance with Art. 25 of the Commercial Code.

The Commercial Code, Art. 25, requires every agreement or deed by which the capital of a Trading Company is increased or diminished to be registered, if not they bind shareholders, whilst third parties can take advantage of them but cannot be prejudiced by them.

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Art. 175, so far as regards this matter, is as follows:—

175. The following business specially pertains to such companies:—

(7.) To make advances on stock, shares, . . . ships and their cargoes.

2. Bonds and Debentures of maritime mortgage when issued by companies duly authorised may be to a special person or to bearer, redeemable or irredeemable, repayable by degrees at fixed times or by drawings, and with or without premiums.

The face value of these bonds and the amount of premium, if any, at any time in circulation, must not exceed the amount of money advanced.

When, in consequence of the bonds being redeemed or other reason, the Bond or Debenture holder has been repaid the whole or a portion of these debts, a corresponding amount of the bonds in circulation must be called in, unless meanwhile new loans have been granted for an equal or greater amount.

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II.—PORTUGAL.

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PORTUGAL.

THE former Code of Commerce in Portugal was promulgated in 1833, at which date there was no Code of Civil Law in force, and therefore special provisions were contained in it about many matters and persons as to which the Civil Code, when promulgated in 1867, laid down general principles. It must often have been difficult, if not impossible, to reconcile the one with the other; moreover, the exigences of commerce in the course of the last half century called on Portugal to follow the examples given by Belgium in 1880, Italy in 1883, and Spain in 1886, and get rid of obsolete arrangements, and bring the Mercantile Law down to date and into accord with the Civil Law.

The Code, of which Book III.—being the portion relating to Maritime Commerce—is translated below, was presented to the Cortes by Sr. Fr. Ant. da Veiga Beirao in 1887, and became law on 1st January, 1889.

Certain Articles both of the Civil Code and of other parts of the Commercial Code bearing upon the *status* of foreigners and of foreign companies in Portugal, or which for other reasons relate to Maritime matters, have been added.

The former Code was, to a great extent, identical—allowance being made for grammatical differences of construction between the two languages—with that which in Holland is still in force, whereas the present text inclines rather to the new Italian Code.

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CODE OF COMMERCE OF THE KINGDOM OF PORTUGAL.

Book III.

Maritime Commerce.

Title I.

Ships.

Chapter I.

General Principles.

Art. 485. Ships are deemed to be chattels (*bens moveis*) for all legal purposes, except as modified or restricted by this Code.

(1.) Longboats, pinnaces, barges, furniture, apparel, arms and stores intended for the use of a ship, are treated as part of a ship, and, if she is propelled by steam, her engine and its appurtenances.

B. 1, F. 190, G. 443, H. 309, I. 480, S. 576, 585, E. 4.

486. Those ships will be deemed national (Portuguese) for the purposes of this Code which are registered in accordance with the special Navigation Act.*

I.M.M.C., Tit. II., Ch. III., Sc. 1, 2.

487. The possession of a ship without a deed of transfer confers no property in it.

B. 2, F. 430, H. 312, I. 483, R. 166, S. 573 diff.

488. Questions of ownership, and liens and loans upon a ship, are regulated by the law of the flag which the vessel carried at the time that the right, which is the subject in dispute, was acquired.

(1.) The same rule is observed in disputes relating to the privileged claims on freight or cargo of a ship.

(2.) A change of nationality will not prejudice prior rights in respect of the ship, unless by International Treaty.

489. Shipbuilding contracts must be in writing :—

(1.) An owner of a vessel which is being built may withdraw from the contract with the builder or contractor, on the ground of want of skill, or fraud shown in the work.

(2.) The Building Contract of a ship must state the agreed price.

* See Decree of 8th July, 1863.

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(3.) The provisions of this Article and its several clauses are applicable to contracts for heavy repairs (*grande reparação*) of ships and to all such as modify, alter, supersede or revoke building or heavy repairing contracts.

(4.) That is deemed to be "a heavy repairing" contract for a ship when of such magnitude as to exceed half the value of the ship.

I. 482, Sc. 3.

490. Every contract for the transfer of a ship must be attested, or to be attested (*celebrado por escripto authentico ou authenticado*).

(1.) The provisions of clause (2) of the preceding Article are applicable to such contracts.

(2.) If the transfer takes place in a foreign country, the title will be registered in the Consular Agency of the place where the ship, in respect of which the contract is made, is lying, or in that of the first port into which the vessel comes if there is no Portuguese Consular Agency at the place where the contract is made.

(3.) The Portuguese Consular Agent must send a copy of the entry in his Register to the Secretary of the Tribunal of Commerce at the place where the ship is registered, by the first post.

(4.) A contract for the transfer of a ship will be at once entered on her own register (*passaporte real*).

B. 2, I. 483, R. 166-168, S. 578.

491. A vessel, when bound on a voyage, cannot be arrested or distrained upon except for debts contracted to fit her out for such voyage, or on account of liability for a collision.

(1.) The arrest or distraint of goods or merchandise laden on a ship under the circumstances provided for in this Article will not authorise its discharge except on such terms as those on which the shipper himself has a right to demand it, such as payment to the person interested in the freight, and expenses of loading and discharging and unstowing and giving bail for the value of the goods.

F. 215, S. 584, 826 (n). *The City of Mecca*, 5 P.D. 28, 6 P.D. 106, under former code.

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Chapter II.

Shipowners.

492. The owner of a ship is civilly liable :—

(1.) For the acts and negligences of the captain and crew.

(2.) For contracts made by the captain relating to the ship and voyage.

(3.) For damages which occur whilst in tow and by reason of the tug.

(4.) For default of sea or harbour pilots who are taken on board.

§ 1. The liability under Clause (2) of this Article ceases on abandonment of ship and freight earned, or to be earned, save in the case of contracts for payment of wages to the crew.

§ 2. The liability under Clause (3) of this Article (ceases) when from the peculiar nature of the towage the control of the ship belongs exclusively to the captain of the towing vessel; in such a case the owner is only responsible for the defaults of the captain and crew of his own ship.

§ 3. The liability under Clause (4) of this Article (ceases) when the sea or harbour pilot is on board in obedience to a local law on the subject.

As to § 2, see *The Quickstep*, 15 P.D. 199.

From § 3 it appears that Portugal now follows England M.S.A., 1894, § 633, and Germany (740) as to the position of a pilot and the liability of shipowners for his acts, but compare Art. 672 *post*.

B. 7, 228, 230, F. 216, G. 451, 452, 454, 68 (1872), H. 321, 322, I. 491, R. 253-255, Sc. 7, 8, S. 586-588.

493. An owner may dismiss the captain before the commencement of the voyage, without any compensation being due, unless he has by his contract reserved his right to demand it.

§ 1. If the captain is a co-owner, he may, in case of dismissal, give up his share, and demand its value.

B. 8, 9, F. 218, 219, H. 328, I. 494, R. 217, Sc. 11, S. 603.

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494. The several persons interested in any maritime adventure may ask to be joined together as a partnership.

§ 1. The persons fitting out the ship may form such a combination, or they with the crew, or one or other of these classes with the shippers.

§ 2. The owners or charterers who fit out a ship are the *armadores*.

S. 586, 589.

495. The provisions respecting ordinary partnerships (*sociedados em commandita*) and joint-stock undertakings, according to the form in which they are constituted, are applicable to maritime partnership in all respects in which they are consistent in principle and saving the provisions of the following clauses :—

§ 1. If the partnership is between the *armadores* and the crew, the captain is manager if no one is specially nominated, if it is with the shippers, the person most largely interested on board or his agent, and, if there is neither, then the captain.

§ 2. Unless otherwise agreed, the profit and loss will be distributed in a maritime partnership in proportion to the interest that each *armador* has, if an owner, in the value of the ship at the time of the contract, if a charterer, in the value of the cargo at price current at the time and place where the agreement is made, and if a member of the crew, in his share of wages and salary.

§ 3. The manager cannot undertake voyages, make new charter parties, insurances, or order repairs, or make other expenses for which the partnership would be personally liable without their consent.

§ 4. The manager has, amongst other functions, the following :—

1. To pay off and discharge the captain unless he is a co-partner.
2. To regulate the expenses of fitting-out,

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provisioning, and working the vessel during the voyage, and within the conditions of the charter party.

3. To insure expenses for repairs made during the voyage, and freight to be earned.

4. To render to the co-partners at the end of each voyage an account of the partnership, and distribute the profit or loss.

§ 5. The partnership is liable to creditors and parties injured by the occurrences of the voyage for the acts of the manager, captain, and crew, with a right to recover over from these persons.

§ 6. This liability may be enforced against the respective shares of co-owners, and the earnings and wages of other partners.

B. 11, G. 460, H. 327-335, R. 177, Sc. 11, S. 598-607.

Chapter III.

The Captain.

496. The captain is the person entrusted with the command and conduct of the ship, and in that capacity is responsible for the defaults of the crew in the exercise of their duties.

§ 1. The responsibility of the master ceases in case of pure or unavoidable accident (*força maior*).

B. 12, 21, F. 221, G. (1872) 2, H. 341, I. 496, R. 216, S. 618, 620.

Under the Portuguese Navigation Act, 1863, the commander and supercargo, and under a Decree of March, 1867, the other deck officers, have to be Portuguese, either native or naturalised (see Art. 516 (n) *post*).

497. The captain is answerable to shippers for goods shipped in accordance with Bills of Lading, for injury sustained by those which are carried on deck without the consent in writing of the shipper, but not for valuables, money, and negotiable documents which are not declared in Bills of Lading.

§ 1. An endorsement on Bills of Lading that goods will be carried on deck, proves the consent of the shipper, unless he immediately protests.

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B. 13, 20, F. 222, G. 479, H. 345, 346, I. 498, R. 227, S. 619, Sc. 117, 143.

498. It is the duty of the captain to form and engage the crew, in agreement with the charterers (*armadores*) or owners of the ship, if present, or of the consignees, if there are any.

§ 1. The captain cannot be compelled against his will to take any member of the crew into the service of the ship.

B. 14, F. 223, G. (1872) 10, 495, H. 343, I. 499, R. 256, S. 610 (1), Sc. 25.

499. The captain must keep on board:—

(1.) A passenger and cargo book.

(2.) An account book.

(3.) A log-book.

(4.) An inventory.

§ 1. The passenger and cargo book may be replaced by manifests and similar documents, provided they fulfil the conditions required by Art. 501.

B. 15, F. 224, H. 358, I. 500, S. 612, Sc. 35.

500. The ship's books will be paged and paragraphed by the Maritime Authority of the ship's port of registry.

§ 1. If it is necessary to renew any of the books when the ship is on a voyage or at a loading port other than her home port, the paging and paragraphing may be effected by the Authority of that port, or by the Portuguese Consular Agent.

B. 15, F. 224, I. 500, S. 612 (3).

501. The passenger and cargo book must contain the names of passengers and the places from which they come and to which they go; the description and amount of goods carried, distinguishing the packages by their numbers and marks; the ports of loading and discharge; the names of the shippers and receivers or consignees, and whatever other remarks the captain may consider necessary about the persons or goods on board.

I. 500, S. 612 (3).

502. The ship's account book must contain all receipts and expenditure on the ship's account, including the wages of the

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w, such expenses as are occasioned by putting into a port, ing money on bottomry, and all other items of credits and ts for which the captain is liable.

B. 15, I. 500, S. 612 (3).

503. The log-book (diary of navigation) must contain a tement of the port from which the vessel sails, the nœuvres executed, the course pursued, the results of graphical, meteorological, and astronomical observations, various occurrences of the voyage, damages sustained, ting what articles are lost or abandoned, an entry of births l deaths on board, resolutions taken in council, and all er circumstances, both ordinary and extraordinary, happen- in the course of the voyage.

B. 15, F. 224, G. 486, 487, H. 358, 359, I. 500, S. 612 (3), Sc. 35.

504. The ship's inventory must contain a list of the arel, furniture, tools, and other articles of any sort plied to the ship, and mention any alterations made in m.

I. 500, S. 612 (1).

505. The captain must have the ship surveyed before dertaking a voyage so as to know that it is seaworthy, cept when less than six months shall have elapsed since last survey.

§ 1. The provisions of this Article apply to foreign vessels leaving ports within the realm and its colonies.

§ 2. The ship's inventory must always be produced at surveys made in pursuance of this Article, to see that the spare stores mentioned in it are in existence.

§ 3. A Judge of the Tribunal of Commerce will preside at the survey, or, failing him, the Maritime Authority of the port.

§ 4. A survey establishes a presumption of seaworthiness of the ship, and, failing it, the captain is answerable to those concerned in ship and cargo.

§ 5. A survey does not free the person taking freights from liability if those concerned prove

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that the ship was unseaworthy in consequence of defects that were not visible.

B. 16, F. 225, H. 347, I. 502, M.M.C. 77-84, R. 228, 229, S. 612 (4), Sc. 26.

506. A captain must produce his log-book to the authority whose duty it is to legalise it, to be viséd, within twenty-four hours of his arrival at his port of destination, and in case of putting into port, shipwreck, or other extraordinary event happening in the course of the voyage, or causing damage to ship, cargo, or passengers, must within the same term make a sea deposition before the same Authority, which will be supplemented by an abstract of information derived from the crew and passengers if it is necessary to interrogate them.

§ 1. Parties concerned, or their representatives, without special procuration, and as agents, will be admitted to assist in the inquiry.

§ 2. Such sea depositions, supplemented by abstracts of information, are sufficient evidence in a Court of Justice, unless the contrary is proved.

§ 3. The captain's answers or deposition, or sea protest, will be sufficient to produce a like effect when he alone is saved from the wreck and appears in the place where the deposition is made.

§ 4. The deposition must state the port and date of departure of the ship, the course pursued, perils encountered, damages sustained by ship or cargo, and, speaking generally, all the important events of the voyage.

B. 32-37, I. 516, S. 612 (8), (15), 624.

507. Except in cases of urgency or necessity, a captain must not commence to discharge the ship until his deposition has been made and approved.

B. 38, F. 248, I. 520.

508. The following are the captain's duties:—

(1.) To receive, stow, preserve and deliver the cargo properly.

(2.) To weigh anchor with the first fair wind, as soon as

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everything is safe on board that is required for the voyage.

(3) To take the ship to her destination.

(4.) To stay on board during the whole voyage, whatever the danger may be.

(5.) To take a local pilot for all bars, coasts or districts where law, custom or prudence requires it, paying attention to the port regulations.

(6.) To summon in council the officers, *armadores* (494, § 2), managers, and shippers who are on board, or their representatives, on any important occasion when damage may result to ship or cargo.

(7.) To use all diligence to save and keep in good custody, money, goods and articles of value and mails and ship's papers when it is necessary to abandon the ship.

(8.) In case of jettison, to sacrifice first articles of least value, those which are least necessary for the ship, those which are heaviest, and those which encumber the deck.

(9.) In case of putting into a port of refuge, to carry out as far as it applies to him the provisions of Title VI. of this book.

(10.) To take all necessary precautions to preserve ship or cargo when captured, placed under embargo, or arrested.

(11.) To take every opportunity during the voyage from ports he enters or is forced into to give the *armadores*, or managers, notice of the incidents of the voyage, of unusual expenses incurred for the benefit of the ship, and of any funds raised for the purpose.

(12.) To produce the ship's books to those concerned who may desire to examine them, allowing them to take copies or make extracts.

(1.) B. 13, G. 481, R. 238, S. 612 (5), Sc. 26, 53.

(2.) G. 483, H. 354.

(3.) B. 28, F. 238, H. 361, I. 514, M.M.C. 111, S. 610 (2), Sc. 62.

(4.) B. 31, F. 241, S. 484, H. 362, I. 514, M.M.C. 111, R. 232, S. 612 (14), Sc. 29, 43.

(5.) H. 363, I. 504, R. 245, S. 612 (5).

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(6.) S. 485, H. 367.
(7.) F. 241, H. 362, I.M.M.C., 111, S. 612 (14), Sc. 43.
(8.) H. 368, S. 815.
(10.) H. 364, 365.
(11.) B. 25, G. 503, H. 360, 377, I. 511, S. 612 (12), Sc. 52.
(12.) Sc. 39.

509. A captain is competent to represent owners or charterers in legal proceedings in any country, whether as plaintiff or defendant, and, moreover, being their agent in all matters relating to the management and the voyage of the ship, is at liberty to take any proceedings during the voyage and in foreign countries.

§ 1. When any of the owners or charterers of the vessel or their representatives are present, a captain may not, without their authority, give orders for repairs, buy sails, ropes or other apparel, arrange freights, or raise money on account of cargo.

B. 22, G. 496, H. 371, I. 510, S. 610, 611, Sc. 48.

510. A captain may, if it is absolutely necessary during the voyage, make use of cargo on board for the ship, after having consulted the principal members of the crew.

I. 508, S. 611 (5), 616.

511. If, in the course of the voyage, the captain needs money for repairs, purchasing provisions, or other necessaries for the ship, he must at once give notice to the *armadores*, charterers, and receivers, to put him in a position to meet the expenses, or if he cannot give this notice, or there is not time to hope for a reply and remittances from those concerned, he may, being authorised by the presiding Judge of the Tribunal of Commerce, or if there is none, then by a Magistrate of the port, incur such expenses and raise the necessary money.

§ 1. If such a thing occurs in a foreign country, he will seek for the authorisation of the Portuguese Consular Agent, or, failing him, of the Judicial authority of the country.

§ 2. Such charges will be entered in the log-book, with a circumstantial account of them as well as of the vouchers.

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§ 3. A captain, before he leaves a port where he has incurred unusual charges and contracted debts without the direct intervention of the owners or charterers of the ship, will send them a detailed account of such expenses, referring to the vouchers for them and for debts he has contracted, including, in respect of the latter, the name and address of the creditors.

B. 24, 25, F. 234, 235, H. 372, 377, I. 509, 511, S. 611.

512. The liability to shippers in respect of goods sold is for the value that they have at the place and time of the discharge of the ship.

B. 24, H. 377, I. 509, S. 659.

513. A captain may not sell the ship without the special authority of the owners, except in the solitary case of its being condemned as unseaworthy.

§ 1. The condemnation and sale of the ship will be ordered by the President of the Tribunal of Commerce or the Magistrate appointed for the purpose, and if the matter takes place in a foreign country, by the Portuguese Consular Agent, or, failing him, by the Judicial authority of the country.

§ 2. If a vessel is condemned as unseaworthy, it is the duty of the captain to charter another vessel to take the cargo to its destination.

§ 3. The duty of which the previous paragraph speaks ceases if a higher freight is demanded than the original vessel was earning, unless those interested in the cargo agree to the increase of freight, which in such case will be on their own account.

B. 27, 94, 97, F. 237, G. 499, H. 376, I. 513, R. 250, S. 578, 579, 657, Sc. 50.

514. A captain may demand payment of his earnings and repayment of disbursements when the accounts are rendered.

§ 1. If there is a doubt as to the settlement of the accounts, the payment of the wages will be made against bail.

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H. 388, S. 602.

515. The same rights and duties pertain to a person acting as captain.

G. (1872) 2.
See 52 & 53 Vict. c. 46, § 1.

CHAPTER IV.

The Crew.

516. The captain or master, the officers, seamen, and ship's boys borne on the muster-roll and shipped in accordance with the regulations, as also engineers, firemen, and other persons in the service of steamships, constitute the crew of the ship.

§ 1. The muster-roll must show the name, rating, and domicile of each contracting party, and his wages and other conditions of service.

§ 2. This contract must be drawn up in writing before the proper Maritime head officer or his deputies, and in foreign countries before a Portuguese Consular Agent, who will then proceed to ship the crew.

§ 3. When the contract is made in a place where there is no Consular Agent, it will be entered and signed in the log.

F. 250, G. (1872) 3, 11, 12, H. 394, 397, I. 521, 522, M.M.C. 73, R. 257, 258, S. 634, 648.

See note to Art. 496 as to nationality of deck officers. By a Decree of 30th December, 1869. Engineers may under certain conditions be foreigners, but two-thirds of the crew must be Portuguese (Navigation Act, 1863, Art. 9). A law of 5th November, 1873, gives the number of certificated officers to be carried in vessels classified according to the voyages undertaken as (1) Coasting (*pequena Cabotagem*), (2) Home Trade (*grande Cabotagem*) or (3) Ocean (*longo curso*).

517. Seamen and other members of the crew are bound to serve in the ship after the term agreed on has expired, for such period as is necessary to return to the port from which they sailed, such return to be direct and with only the necessary ports of call.

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§ 1. In the case provided for by this Article, the crew have a right to the increment of pay corresponding to the longer period.

§ 2. The contract is deemed to be completed even before the time agreed on has expired if the ship has returned to her port of sailing and completed her voyage within such period.

G. (1872) 54, I. 524, S. 636, Sc. 82, 83.

518. If the contract with the crew is for an undefined period, or for all voyages that the ship may undertake, the crew can claim their discharge at the end of three years, saving the proviso of the preceding Article.

§ 1. If at such time the vessel is in a foreign country, and her return voyage is neither begun nor arranged, the crew have a right, over and above the wages they have earned, to be paid the expenses of their return home, unless the captain gets them a ship.

§ 2. No discharge can take place in a port of call or distress, but only in the port where the voyage terminates.

G. (1872) 61-67, I. 525, S. 637, Sc. 82, 83.

519. When the contract is terminated, or deemed to be terminated, and the seamen are discharged, the captain must give them a certificate of discharge, stating the name and description of the ship, and must enter this discharge in the log-book.

I. 562.

520. No captain or seaman can ship goods on his own account without the leave of the owners or charterers, or without paying freight, unless it has been so agreed in their contracts.

B. 66, F. 251, H. 352, 410, I. 527, Sc. 28, 81.

521. The reciprocal rights and duties between captain and crew commence on the signing of the contract.

G. (1872) 28, H. 399, R. 266, Sc. 74.

522. If the voyage fails to be carried out in consequence of some act of the owner, captain, or charterer, the crew

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retain as compensation the advances made to them on account of their wages.

§ 1. If no advance has been received, a seaman engaged by the month will receive a month's pay as compensation. If shipped for the run, he will receive a sum corresponding to a month's pay, calculated on the probable length of the voyage, if this time is more than a month, or the whole of his agreed pay if the time be less.

F. 252, H. 411, I. 529, S. 638, Sc. 82.

523. If the voyage be abandoned after the vessel has sailed, a seaman shipped by the run is paid as if it had been completed; if paid by the month, he is paid for the months he has served, and gets compensation proportional to the probable length of the voyage, and in both cases he will be paid his expenses of returning to his home port, unless the captain gets him a ship.

F. 252, H. 412, I. 529, S. 638, Sc. 82.

524. If trade with the place to which the vessel is bound is prohibited in consequence of sanitary or police precautions, or if the vessel be placed under embargo by orders of Government, before the voyage is commenced, only the days actually occupied by the crew in fitting out the ship will be paid for.

B. 49, F. 253, G. (1872) 57 (5), H. 413, I. 530, S. 639, 640, Sc. 91.

525. If the prohibition of trade or embargo of the ship takes place during the voyage, the crew have a right in the first case to wages proportional to their length of service, and in the second to half-pay during the time the embargo lasts, if paid by the month, and to the whole agreed sum, if they have contracted for the run.

B. 50, F. 254, G. (1872) 57 (5), H. 414, I. 531, S. 641, Sc. 91.

526. If the voyage is prolonged in the interest of the charterers, and the ship in consequence comes to a different port from that to which it was originally destined, wages agreed on for the run will be augmented in proportion to the prolongation of the voyage.

§ 1. If the vessel is discharged at a place nearer

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than that agreed on, the wages of the crew do not, on this account, sustain any abatement.

B. 51, 52, F. 255, 256, H. 441, I. 532, 533, R. 271, S. 638, Sc. 94.

527. If the crew have shipped on shares (*a partes*) they have no right to any compensation in respect of what happens in the course of the voyage, except their claim on the partnership.

B. 53, 55, F. 257, 260, H. 416, I, 534, S. 642.

528. In case of condemnation, or capture, or total loss of ship and cargo, no wages are due to the crew unless the freight has been paid in advance, but if they have received an advance it is not restored.

§ 1. If any portion of the vessel is saved, wages which have been earned have a preferential claim on the proceeds of the wreck, or on whatever is recovered from the prize. Moreover, if the objects which are salved are insufficient, or if only cargo is salved, the crew will be paid beyond this out of the freight.

§ 2. Whatever the nature of the agreement may be, the crew will be paid wages for days occupied in salving ship and cargo.

B. 54, F. 258, 261, G. (1872) 56, H. 418, 419, 421, I. 535, 536, R. 301-303, S. 643, Sc. 91.

529. A seaman who is wounded or maimed in the service of the ship in the course of the voyage will be paid his wages for the whole period during which he is disabled, and also receives medical attendance at the expense of the ship.

§ 1. If the service to which this Article refers is a salvage service, the expenses of medical treatment are on account of ship and cargo.

§ 2. If the treatment is on shore (*i.e.*, if the man is left in hospital), the captain will give the Portuguese Consular Agent the money required for such treatment, and for sending the man to his home port; if there is no Consular Agent, the captain will take care that the man is admitted into a hospital or infirmary, by making the advance necessary for his treatment.

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§ 3. If the seaman is landed, this treatment and payment of wages will not continue beyond four months.

B. 57, 58, F. 262, 263, G. (1872) 48, 49, H. 423-427, I. 537, R. 305-307, S. 644, Sc. 90.

530. If a seaman is wounded, or contracts disease, or is maimed by his own fault, or when on shore without the captain's leave, the cost of his treatment will be at his own expense; nevertheless, the captain must advance such expenses if the seaman requires it, and he must proceed as laid down in the preceding Article when it is necessary to land the seaman, preserving his (the captain's) right to be repaid.

§ 1. In case the seaman is wounded, diseased or maimed by his own fault, wages are only due for the time he has actually been doing duty.

B. 59, F. 264, G. (1872) 50, H. 428, I. 538, R. 278, S. 644, Sc. 90.

531. If any seaman dies during the voyage, his representatives are entitled to his wages up to the day of his death, if he shipped by the month; and if he engaged for a lump sum for the whole voyage, they are entitled to half the sum if he died on the outward voyage, or at the port of destination, and to the whole if he died on the homeward voyage.

§ 1. If the seaman contracts for a share, then his share is due to his representatives, if he died after the voyage was commenced. (See Art. 527 *ante*.)

§ 2. If the seaman is killed in defending the ship, the whole voyage wages are due to him, whether shipped by the month or for a lump sum, if the ship reaches a port of safety.

B. 60, F. 265, G. (1872) 51, H. 429-431, I. 539, R. 308, S. 645, Sc. 93.

532. When a ship is captured, wages are due up to the day of capture.

§ 1. If seamen are made prisoners when away from the ship on duty, their wages are due for the period they do duty.

§ 2. The cargo contributes to this payment if the seaman was away from the ship in its interest.

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B. 61, F. 266, 267, G. (1872) 56, H. 432-435, I. 540, S. 643.

533. If the ship is sold whilst the contract with the crew is in force, they have a right to be sent to their home port at the expense of the ship, and to receive the wages agreed on.

I. 541, R. 309, S. 647 (3), Sc. 88.

534. The captain may discharge a seaman before the end of the term agreed on without its being necessary to show the reason of the discharge, provided he gives him his certificate of discharge, and the means to convey him to his home port, or gets him a berth in a ship bound to it.

§ 1. A seaman who is discharged, after the crew are shipped, without just cause, has a right to two months' wages as compensation, in addition to what he has earned during the time already past.

§ 2. The captain cannot, in any of these cases, make the owners or charterers of the ship repay him the amount of compensation he has had to pay, if the discharge has not been made with their consent.

B. 62, F. 270, G. (1872) 57, 58, H. 344, 437-439, I. 542, R. 310, 312 diff., S. 637, Sc. 89.

535. The seamen have a right to be maintained on board until they are paid their wages, or whatever interest they have under their contract, in full.

§ 1. Moreover, when, after the agreed time of service has expired, (the crew) are obliged to do duty in the ship until she is in a position of safety, has got free *pratique* and discharged her cargo, they are entitled also to be maintained on board, and to the payment of wages for this additional service.

G. (1872) 55, I. 524, 544, H. 446, R. 300, Sc. 84.

536. If, the ship being in quarantine, it is decided to despatch her on another voyage, a seaman who does not wish to agree to go such voyage has a right to be disembarked in the quarantine ground, his necessary expenses and his wages for the whole time he is detained there being at the ship's charge.

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I. 544.

537. Wages and other interests of seamen cannot be assigned, arrested, or pledged except for the legal support of the families or for debts of seamen to the ship.

§ 1. In case of sums legally due for the support of families, the assignment, arrest, or pledge may only extend to one-third of the wages, unless the seaman is permitted to agree otherwise.

F. 321, H. 452, I. 545, R. 269, Sc. 69, 76.

CHAPTER V.

Bills of Lading.

ART. 538. A Bill of Lading must contain :—

(1.) The name and residence of the owner, the shipper, the captain or charterer, and of the consignee, when that is a specific person.

(2.) The name, nationality, and burthen of the ship.

(3.) A statement of the nature, quality, and quantity of the goods shipped, with their marks, counter-marks and numbers.

(4.) The ports of departure, of call, and of destination.

(5.) The freights.

(6.) The date on which the Bill of Lading is signed.

(7.) The number of Bills in the set.

§ 1. A Bill of Lading may be to order, to bearer, or to a specific person.

§ 2. The captain must give as many Bills of Lading as the shipper may require, but not less than four, one for the shipper, another for the consignee, another for the captain, and another for the fitter out of the ship.

§ 3. Each Bill of Lading must state for which of the parties concerned it is intended.

§ 4. The captain will sign all the Bills of Lading except those intended for himself, which will be signed by the shipper.

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B. 40, 41, F. 281, 282, G. 644, 645, H. 507, 508, 509, 510, I., 555, 556, Sc. 132, 133, 134, S. 706, 707, E. 99, 100.

539. Goods will be delivered by the captain at their destination, on board, or at the Custom House, in accordance with the custom of the port, or with the agreement contained in the charter party or Bill of Lading, to the person pointed out by this last document.

§ 1. If more than one person present regular Bills of Lading for the same goods, they will be placed on deposit to order at the Custom House until it is legally decided to whom they should be delivered, without prejudice to Customs duties and any other duties legally chargeable on the said goods.

B. 44, 78, F. 306, G. 651, H. 515-518, I. 557, Sc. 136, 140, 157, 165, S. 711, 716.

540. A Bill of Lading in proper form is evidence as between the parties interested in the cargo, and between them and the insurers and the shipper, unless fraud be proved.

§ 1. The fraud of the shipper is no defence against a second transferee (*ao terceiro portador* = lit., a third party bearer).

§ 2. Third parties, who are strangers to the charter party, and especially insurers, may prove the erroneous nature of a Bill of Lading by any legal means.

B. 42, F. 283, G. 653, H. 512, I. 558, Sc. 144, S. 709, E. 101.

Chapter VI.

*Charter Parties.**

541. A contract for chartering must be reduced into writing in a document which constitutes a charter party or chartering, and it must state :—

* Charters made in Portugal will be interpreted by Portuguese Law, even if for foreign ships, 3 R.I.D.M. 230.

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(1.) The name, nationality, and tonnage of the ship.
(2.) The name of the commander.
(3.) The names of the persons by and to whom the ship is chartered, or the shipper.
(4.) The place and time agreed on for loading and discharging.
(5.) The amount of the freight.
(6.) Whether the charter be for the whole ship or a part.
(7.) The compensation agreed on in case of delay (rate of demurrage).

F. 273, G. 558, H. 454, I. 547, Sc. 109, S. 652.

542. A chartering contract may be :—
(1.) For the whole ship for a voyage.
(2.) For a portion of the ship.
(3.) For one or more voyages.
(4.) By weight, measure, or number, where the commander receives all such goods as are offered and appear suitable to him to be loaded and carried to his port of destination (*i.e.*, when he puts his vessel on the berth as a general ship).
(5.) For specific articles, or such as are distinguished only by number, weight, or measure.

§ 1. If not specified, the contract is presumed to be for the whole voyage.

§ 2. If the person who lets a ship declares her burthen to be greater or less than her true burthen, if the difference exceeds $\frac{1}{20}$ the hirer has a right to be indemnified for losses and damages.

B. 70, F. 286, 289, 290, G. 557, H. 453, 459, 461, I. 561, 562, S. 652, 669, 688.

543. The charterer must, within twenty-four hours after the ship is loaded, deliver to the commander the papers connected with the cargo.

G. 592, H. 471, Sc. 125.

544. A change of commanders does not affect an existing charter party, unless so agreed.

I. 548.

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545. If the charter party does not specify the time allowed for loading and discharging the ship, the lay days are calculated, for a steam vessel, at the rate of 120 tons *per diem*, and for a sailing vessel, at half this rate.

§ 1. Where there are days over on demurrage, they will be paid at the rate of 100 reis (*circa* 5½d. at par) per ton for a steam vessel, and at 50 reis (2¾d.) for a sailing vessel.

§ 2. Sundays and Holy days will not be reckoned in the time laid down in this Article and § 1.

B. 67, F. 274, G. 569, 574, H. 457, 458, I. 549, Sc. 119, 120, 121, S. 656.

546. If the charter party is by the month or for a specified time, it will run from the day on which the vessel was ready to load until the day on which the discharge was completed.

B. 69, F. 275, G. 623, H. 462, 463, I. 550, S. 658.

547. If the sailing of the ship for its port of destination is stopped by insuperable obstacle (*força maior*), war, blockade, or prohibition of trade, the charter party is rescinded.

§ 1. In the cases mentioned in this Article, the person letting the ship has no right to compensation, and the hirer will pay the expenses of unloading the cargo.

B. 90, F. 276, H. 499, I. 551, S. 690, Sc. 159, 162.

548. If the impediment occurs in the course of a voyage, there is a claim for freight for the portion accomplished (*pro rata itineris peracta*).

§ 1. If the impediment be temporary, the hirer may unload the goods at his own expense, and on condition of reloading them, or indemnifying the commander, giving security when required in either case.

B. 86, F. 277, 278, H. 505, I. 552, S. 691, 692, Sc. 161.

549. If the port to which the ship is bound is blockaded, or if entrance into the port is prevented by other insuperable obstacle (*força maior*), the commander will go into another port, or return to that from which he sailed, as may appear most convenient and most in the interest of the hirer.

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§ 1. If the ship returns to the port from whence she sailed, she will earn freight for the outward voyage, and one-third in addition for the return voyage.

§ 2. If she goes into another port, she will earn not only the outward freight but also one-third for the further voyage.

§ 3. The commander may also forward the goods to their destination in another ship, in which case the freight is payable by the original hirer.

§ 4. The directions in this Article and its clauses apply only in the absence of special instructions, or when such instructions cannot be carried out.

B. 92, F. 279, 299, H. 370, 504, I. 553, 572, S. 677, 688 (4).

550. The commander's cabin and spaces set apart for the accommodation of the crew and ship's stores, are reserved, and not considered to be included in the charter party.

B. 68, G. 559, H. 456, Sc. 110.

551. If the charter party does not specify a date on which the ship must be ready to take in cargo, the lessor of the ship may fix it.

§ 1. A lessor of a ship who fails to have her ready at the appointed time, is liable for losses and damages.

G. 568, H. 470, Sc. 111, S. 688 (3).

552. If the whole ship is chartered and the charterer fails to fill her up, the commander may not load other goods without a Bill of Lading from the charterer.

§ 1. The freight on goods which complete the cargo belongs to the hirer.

B. 72, F. 287, G. 579, H. 468, I. 563, Sc. 126, 130, S. 672, 679, 680.

553. If the charterer throws up the contract before commencing to load the ship, he must pay half the freight.

§ 1. If he loads less than he agreed to do, he must pay full freight.

§ 2. If he loads more than he agreed, he must pay freight for the excess.

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B. 75, F. 288, G. 579-581, H. 464, 467, 469, I. 564, Sc. 126, S. 674, 680, 688.

554. The charterer may reland any of the goods he has shipped on payment of full freight and the expenses of shipment, stowage, and discharging, and on returning the Bills of Lading.

B. 89, F. 291, 293, G. 582, 583, H. 473, I. 567, Sc. 128, 163, S. 685.

555. The freight on goods which are sacrificed to save the ship and cargo is paid in full for General Average purposes.

§ 1. Freight is also paid in full for goods which perish during the voyage on account of their own inherent vice, or which are sold in their own interest only, deducting any expenses which the commander has been saved from incurring by the event.

§ 2. Full freight is also paid for goods used for ship's necessities, if she reaches port in safety, preserving the obligation of the ship to pay to the owners of the goods their value at the port of discharge. (See Art. 510 *ante*.)

B. 77, 93, 96, F. 289, 301, 310, G. 619, H. 480, 481, I. 575, 576, S. 659, 660, 963.

556. If the commander is compelled by an accident or unavoidable circumstances (*força maior*), to repair the ship during the voyage, and the charterer, not wishing to await the completion of the repairs, lands his goods, he will pay full freight, giving security, moreover, for the share of General Average to which the goods may be liable.

B. 94, F. 296, G. 640, H. 478, I. 570, S. 683, Sc. 163.

557. No freight is due if the charterer proves that the ship was unseaworthy at the time she undertook the voyage for which she was chartered.

B. 95, F. 297, G. 560, H. 479, I. 571, S. 676.

558. If the ship is chartered by the month or for a specific time, no freight, and if chartered by the voyage, no increase of freight, is payable for the time she is under repair.

§ 1. Neither is any freight or increase of freight payable if the ship is delayed by a blockade of

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the port, or other unavoidable circumstance (*força maior*).

B. 85, F. 300, G. 640, H. 478, I. 574.

559. If the person to whom the goods are addressed, or consignee, refuses to take delivery of them, the commander must request the presiding Judge of the Tribunal of Commerce to nominate a consignee, who will take account of the goods and proceed to a Judicial sale of so much as may be needed to pay freight, averages, and charges to which they are subject.

§ 1. If the goods are perishable, such consignee will proceed to sell the whole, and place the proceeds on deposit, on a Judge's order, rendering an account which will include a commission on the sale in accordance with the custom of the place.

B. 78, F. 305, G. 629, H. 489, I. 579, Sc. 156, S. 625, 668.

560. If the goods are loaded to be delivered to order, the commander must advertise for the person to take delivery in three successive numbers of the local newspaper, if there is one; if there is none, by posting up a notice in the customary place.

§. 1. If no one claims the goods the commander proceeds as laid down in the preceding Article.

G. 595, 605, Sc. 138, 156, S. 625.

561. A commander cannot retain goods on board to secure freight, averages and charges; he can only demand that sufficient to meet such charges shall be kept on deposit pending the discharge.

B. 79, F. 306, G. 615, 616, H. 487, 1. 580, Sc. 155, S. 665.

562. No deduction can be demanded from the freight, nor can the goods be abandoned for the freight, on account of delay in arrival, diminution in value, or deterioration.

§ 1. In the case of vessels containing liquids, and which have leaked to an extent exceeding one half, such vessels and their contents may be abandoned for the freights.

The former Code contained (Art. 1533) somewhat elaborate provisions

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bearing on the commander's right to recover freight from a shipper if cargo was delivered to a consignee from whom the freights could not be got (see 3 R.I.D.M. 230). A similar provision is found in the Dutch Law (Art. 488).

B. 77, F. 310, G. 617, H. 496, 497, I. 581, Sc. 152, S. 687.

CHAPTER VII.

Passengers.

ART. 563. The carriage of passengers will, in the absence of special agreements, be regulated by the provisions of this chapter.

B., Tit. IV., G. Pt. 6, H. Ch. V., Sec. V., I. Tit. IV., Ch. IV., M.M.C., Tit. II., Ch. VIII., S. Tit. III., Sec. I. (5).

564. If a passenger does not come on board at the proper time, the whole passage-money is due.

§ 1. If he fails to come on board in consequence of death, illness, or other cause beyond his control (*força maior*), which prevents him prosecuting the voyage, or if he gives notice that he abandons it, half passage-money is due.

§ 2. If the passenger is prevented from prosecuting the voyage by the commander's act, he has a right not only to the immediate repayment of his passage-money, but also to compensation for his losses and damages.

§ 3. If the hindrance is caused by accident or causes beyond the control of the parties (*força maior*) which affect the ship, the passage-money must be repaid, and the contract is deemed to be rescinded without any claim for compensation on either side.

B. 127-131, G. 667, 668, 670, 671, I. 583, H. 522, 524, 525, S. 694, 696, 697, Sc. 169, 170, E. 136, 137.

565. If, in the course of the voyage, a passenger chooses to land at a port other than that to which he has taken passage, full passage-money is due.

§ 1. If he disembarks at a port other than that to

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which he is bound, in consequence of the commander's act or default, he has a claim for compensation for losses and damages.

§ 2. If he disembarks in consequence of an accident or a cause beyond control (*força maior*) affecting either the ship or the passenger, passage-money is due *pro ratâ itineris peractâ*.

B. 130, 131, G. 667, 668, 670, 671, I. 584, S. 698, Sc. 170, E. 136, 137, 140.

566. If a passenger is lost by shipwreck, nothing is repayable to his heirs which he has paid, nor can anything be demanded from them if he has not paid.

G. 669, I. 584, E. 138.

567. If the sailing of the ship is delayed for any reason other than accident or circumstances beyond control, a passenger has a right to remain on board, and also to be victualled during the whole period of the delay, and further, to compensation for loss and damage.

B. 133, G. 672, I. 585, S. 698.

568. If the delay exceeds ten days, the passenger may rescind the contract, and claim the repayment of passage-money that he has paid.

§ 1. Provided always that if the delay is caused by bad weather, the repayment will only amount to two-thirds.

B. 133, G. 672, I. 585, S. 698.

569. Where a vessel is used exclusively for the carriage of passengers, she must take them to their destination without other stoppages than such as have been notified beforehand or are customary.

B. 126, I. 586, H. 529, S. 698, 701.

570. If the ship deviates from her voyage through the action or default of her commander, the passengers will be boarded and lodged for the whole time of such deviation at the expense of the ship, and have a right to compensation for loss and damage if the contract is rescinded.

I. 586.

571. If the ship carries cargo as well as passengers, the

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commander may go into any port that is proper for him to discharge in.

B. 126, I. 586.

572. When the ship is detained for repairs a passenger may rescind the contract on payment of passage-money in proportion to the distance accomplished.

§ 1. If he prefers to wait till the ship resumes her voyage there is no increase in the passage-money, but he will victual himself during the delay.

B. 133, G. 672, I. 587, H. 526, S. 698, E. 141.

573. The victualling of a passenger during a voyage is deemed to be included in the passage-money.

§ 1. If the victualling is excluded, it is the duty of the commander to supply what is necessary to a passenger at a fair price.

§ 2. In the case of voyages beyond the mainland of the realm passengers have a right to stay on board and be victualled for such time as the vessel remains at the port of destination, if not exceeding twenty-four hours.

B. 121, I. 588, H. 530, S. 702, Sc. 173, E. 142.

Chapter VIII.

Privileged Claims and Mortgages.

Section 1.

Privileged Claims.

574. The claims specified in this section have a preference over any general or special privileges on chattels conferred by the Civil Code.

F. 214, I. 666, H. 312, 313, 318, Sc. 267.

575. In case the ship or any other object to which the privilege attaches deteriorates or diminishes in value the privilege still attaches to the residue or to what can be salved and placed in safety.

B. 3, I. 667, Sc. 271.

576. If the proceeds of the ship or articles to which the

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privilege attaches do not suffice to pay off the privileged debts of any one class, they are divided rateably among them.

B. 4, F. 191, I. 669, S. 581, Sc. 269.

577. The endorsement of a document conferring a privileged claim carries the privilege with it.

F. (1885) 12, I. 670.

578. Debts which are privileged upon the ship are ranked in the following order:—

(1.) Costs and Court charges incurred in the general interest of the creditors.

(2.) Rewards due for assistance and salvage.

(3.) Pilotage and towage into port.

(4.) Tonnage, light and anchorage dues, public health and other port charges.

(5.) Charges for watching the ship and warehousing its appurtenances.

(6.) The wages of the commander and crew.

(7.) Charges for looking after and repairing the ship, its apparel, and furniture.

(8.) The repayment of the price of cargo that the commander has found it necessary to sell.

(9.) Insurance premiums.

(10.) Balance of purchase-money due for the last transfer of the ship.

(11.) Expenses incurred in repairing the ship, its apparel, and furniture for three years prior to the voyage, reckoning from the day on which the repairs were completed.

(12.) Debts arising from the contract for building the ship.

(13.) Insurance premiums on ship if the whole is insured, or on the part and its appurtenances which are insured and are not included in No. 9 (*i.e.*, for former voyages).

(14.) Compensation due to shippers for short delivery or for damage to cargo.

§ 1. The debts mentioned in Nos. 1 to 9 (inclusive) refer to such as are contracted in the course of the last voyage and on account of it.

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(1.) B. 4 (1), F. 191 (1), G. 757 (1), 770, I. 675 (1), H. 317, S. 580 (2), E. 5 (1).

(2.) B. 4 (6), I. 675 (2), H. 313 (1), Sc. 268 (1).

(3.) B. 4 (2), F. 191 (2), G. 757 (5), 772 (3), I. 675 (4), H. 313 (1), S. 580 (3), Sc. 268 (1), E. 5 (2).

(4.) B. 4 (2), F. 191 (2), G. 757 (3), 772, I. 675 (3), H. 313 (2), S. 580 (3), E. 5 (2).

(5.) B. 4 (3, 4), F. 191 (3, 4), G. 757 (1, 2), 770, I. 675 (4, 5), H. 313 (3, 4), S. 580 (4, 5), E. 5 (3, 4).

(6.) B. 4 (7), F. 191 (6), G. 757 (6), 761, 771, 772, I. 675 (7), H. 313 (5), S. 580 (6), Sc. 268 (2), E. 5 (6).

(7.) B. 4 (9, 10), F. 191 (5), I. 675 (6), H. 313 (6), S. 580 (8), E. 5 (5).

(8.) B. 4 (8), F. 191 (7), G. 757 (9), 772 (5), H. 313 (6), S. 580 (7), Sc. 268 (3), E. 5 (7).

(9.) B. 4 (12), F. 191 (10), I. 675 (10), S. 580 (9), E. 5 (10).

(10.) B. 4 (15), F. 191 (8), I. 675 (12), 315 (1), S. 580 (8), E. 5 (8).

(11.) F. 191 (8), H. 313 (7), S. 580 (8), Sc. 268 (4), E. 5 (8).

(12.) B. 4 (10, 11), F. 191 (8), H. 313 (8), S. 580 (8), E. 5 (8).

(13.) B. 4 (12), F. 191 (10), I. 675 (10), S. 580 (9), E. 5 (10).

(14.) B. 4 (13), F. 191 (11), G. 757 (8), 772 (4), I. 675 (11), H. 313 (10), S. 580 (10), Sc. 268 (4), E. 5 (11).

579. Privileges pertaining to debts on the ship are extinguished:—

(1.) By the ordinary methods in which rights are lost.

(2.) By a sale of the ship by an order of a Court: as soon as the purchase-money is paid into Court, the privileges and claims of creditors are transferred to the fund.

(3.) By a voluntary sale effected after citing the privileged creditors, when three months have elapsed without their taking steps to avail themselves of their privilege or to attach the purchase-money.

B. 6, F. 193, G. 767, 768, I. 678, H. 316, S. 582, Sc. 271, E. 7.

580. Debts which are privileged upon cargo are ranked in the following order:—

(1.) Court charges incurred in the general interest of the creditors.

(2.) Rewards due for salvage.

(3.) Custom House duties at the port of discharge.

(4.) Charges for freight and discharging.

(5.) Warehouse expenses.

(6.) Contributions to general average.

(7.) Moneys advanced on bottomry of this security.

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(8.) Premiums of Insurance.

§ 1. The privileges of which this Article treats may be general, affecting the whole cargo, or special, affecting a portion of it, according to whether the debts are in respect of the whole or a portion of it.

B. 71, 80, F. 280, 306-308, G. 781, I. 671 identical, except that (7) and (8) are transposed, H. 487, 548, 566, S. 665-668, 678, Sc. 276, E. 124-126.

581. Privileged claims on cargo lapse if the creditors do not make use of them prior to the discharge of the cargo, or within ten days immediately following it if during that time the cargo has not passed into the possession of a third party.

B. 80, 81, F. 307, 308, I. 672, S. 667, Sc. 277, E. 126, 127.

582. Debts which are privileged upon freight are ranked in the following order:—

(1.) Court charges incurred in the general interest of the creditors.

(2.) Wages of the commander and crew.

(3.) Contributions to general average.

(4.) Advances on bottomry of this security.

(5.) Premiums of insurance.

(6.) Amount of compensation due for short delivery of cargo.

(2.) B. 63, F. 271, G. 757, 759, I. 673, H. 321, 451, S. 587, 646, Sc. 268, E. 30, 89.

583. Privileged claims on freight lapse as soon as the freight is paid, except in the case mentioned in Art. 523, when the privilege attaching to seamen's wages is only extinguished when six months have expired from the date of the abandonment of the voyage.

G. 774, S. 646.

Section II.

Mortgages.

584. Mortgages on ships are created either by operation of law or by agreement between the parties.

B. 1, 134, F. (1885) 1, 35.

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585. Mortgages on ships, whether created by operation of law or voluntarily, produce the same results, and are governed by the same rules as mortgages of real property, so far as their peculiar nature permits, and except as modified by the present section.

B. Tit. V., F. (1885), S. (1893) 1.

586. Mortgages on ships can only be effected by their actual owners or by a special power of attorney.

§ 1. When a ship belongs to more than one person, the whole may be mortgaged for the expenses of fitting out and making a voyage, by the express agreement of the majority representing more than half of the ship.

§ 2. A part owner of a ship cannot mortgage his share in the ship except with the consent of the majority defined in the preceding paragraph.

B. 23, 136, F. (1885) 3, G. 467, S. (1893) 4, 5.

587. A mortgage on a ship that is being built or to be built is also allowed for the expenses of building, provided that the deed of mortgage at least specifies the length of the keel of the ship and approximately its other principal dimensions, as also its probable tonnage, measurement, and the building yard in which it is being built or to be built.

B. 138, F. (1885) 5, I. 486, Sc. 3, S. (1893) 5.

588. A mortgage on a ship is created by an attested deed except in the case mentioned in § 2 of Art. 591.

B. 135, F. (1885) 2, I. 485, S. (1893) 3.

589. A mortgage on a ship securing debts that carry interest covers interest for five years in addition to the capital.

B. 143, 145, F. (1885) 13, H. 315 (2), S. (1893) 10.

590. Mortgages on ships will be registered by the registrar of the Tribunal of Commerce at the ship's home port.

§ 1. In the case of a mortgage being given on a ship which is being built or to be built, the proper registrar is the one at the place where the building yard is situated.

§ 2. Where the ship's port of registry is not that at which she was built, a certificate must

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be produced from the latter stating if there is a mortgage on the ship or not; if there is any registered mortgage it must be transferred and registered at the ship's port of registry.

B. 139-141, F. (1885) 6, I. 485, 486, H. 315, S. (1893) 14.

591. A shipowner may place on the register a provisional mortgage specifying what sum or sums of money may be raised on the ship in the course of the voyage.

§ 1. The entry of the mortgage will be made when out of the realm by the regular Portuguese Consular officer.

§ 2. If there is no Consular officer at the place where it is desired to mortgage, the mortgage may be effected by a deed executed on board by the contracting parties in the presence of two witnesses, and entered in the ship's account book.

See F. (1874) 26, now repealed by F. (1885) 39.

592. Mortgages will be paid, after the satisfaction of debts privileged on the ship, in the order of priority of their entry on the Commercial Register.

§ 1. If there are several mortgages registered on the same day, they will be paid *pro rata*.

B. 142, 150, 151, F. (1885) 10, 34, I. 675 (13), H. 315 (2), S. (1893) 31, 32, 36, 38.

593. Mortgages on ships are subject to extinction by lapse of time in accordance with law.

B. 143, F. (1885) 11, S. (1893) 49.

594. If the ship is lost or condemned, the rights of mortgagees include the remains of the ship and also the insurance.

B. 149. See F. (1874) 17, which, however, is now repealed by F. (1885) 39, I. 667, 675 (13), S. (1893) 8, 9, 29.

TIT. II.

Insurance against Perils of the Sea.

595. The rules laid down in Chap. I. and Chap. II., Sect. 1 of Tit. XV., Book II., so far as they are compatible with

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the peculiar nature of Marine Insurance and are not affected by the regulations of this Title, apply to the contract of insurance against sea perils.

The law of insurances against fire, perils of inland traffic and upon life is contained in Book II., Tit. XV., Chap. II., Sects. II. and IV., and Chap. III. The Articles referred to in the preceding Article (424) are as follows:—

BOOK II.—TIT. XV.

Insurance.

CHAPTER I.

General Provisions.

ART. 425. All Insurances except Mutual ones are commercial as regards the insurer whatever the object is, and as regards the assured when the objects insured are merchandise or goods intended to be used in trade, or any business premises.

§ 1. Mutual Insurances are regulated by the provisions of this Code so far as any commercial matters outside the Mutual agreement are concerned.

§ 2. Marine Insurance is specially regulated by the provisions applicable to it in Book III. of this Code.

426. A Contract of Insurance must be in a written document which constitutes a Policy of Insurance.

§ 1. An Insurance Policy must be dated and signed by the insurer (underwriter) and must state:—

1. The name or names of the firm, and the residence or domicile of the insurer.
2. The name or names of the firm, and the status, residence or domicile of the assured.
3. The subject matter insured and its nature and value.
4. The perils insured against.
5. The time at which the perils (insured against) commence and terminate.
6. The amount insured.
7. The Insurance Premium.

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8. And all such circumstances as may concern the insurer as well as all conditions agreed on by the parties.

F. 332.

427. An Insurance Contract is governed by the conditions contained in the policy which are not illegal, and in the absence or insufficiency of such by the provisions of this Code.

428. An insurance may be made either on account of self or on account of another person.

§ 1. If an insurance is made for a person or in the name of a person who has no interest in the subject matter of the insurance, the insurance is void.

§ 2. If the policy is not declared to be on account of another person it is deemed to be made on behalf of the person making it.

§ 3. If the interest of the assured is limited to a share in a thing which is insured in full, or to some right over it, the insurance is deemed to be made on account of all concerned, preserving to each the right to receive the insurance in proportion to his premium.

429. Any inaccurate declaration as well as any concealment of facts or circumstances known to the assured or to the person making the insurance, and which might have an effect on the existence or conditions of the contract, render the insurance void.

§ 1. If the person making the declarations has acted *malâ fide* the insurer is entitled to retain the premium.

430. An insurer may reinsure with another person the thing he has himself insured, and the assured may insure his premium of insurance with another person.

431. If the property in the article insured is transferred during the period of the insurance, the insurance passes to the new owner by the act of transfer of the property insured, provided that any matter outstanding between the insurer and the original assured in connection with it is adjusted.

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Chapter II.

Insurance Against Dangers.

Section I.

General Provisions.

432. An insurance against peril may be effected :—

(1.) On a whole concern composed of many articles.

(2.) On the whole of each individual article.

(3.) On a share of each article either jointly or severally.

(4.) On anticipated profits.

(5.) On growing crops.

433. If an insurance against perils is for a less sum than the value of the thing insured, the assured will, in the absence of an agreement to the contrary, be responsible for a proportional part of losses and damages.

§ 1. If an insurance is for less than the value of the thing insured, the difference in value may be insured, and the insurer of the difference will be answerable for the excess, note being taken of the respective dates of the contracts.

§ 2. If all the insurances are of the same date each will be effective to secure the total value in proportion to the sum insured by each.

434. The assured may not, under penalty of rendering it void, effect a second insurance for the same time and against the same peril upon the same article for its full value except in the following cases :—

(1.) When the second insurance is conditional on nullity of the first, or on the partial or total insolvency of the first insurer.

(2.) When the rights under the first insurance are made over to the second or renounced.

435. If the amount insured exceeds the value of the thing insured, the insurance is only valid up to this value. (See Art. 601 *post.*)

436. An insurance is void if at the time the contract is made the insurer is aware that the risk has terminated, or if the assured or the person effecting the insurance is aware that a disaster has occurred.

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§ 1. In the former case the insurer has no right to the premium, in the second he is under no obligation to indemnify the assured, but has a right to retain the premium.

437. An insurance is of no effect:—

(1.) If the thing insured is not exposed to the peril.

(2.) If a disaster results from an inherent defect known to the assured and not disclosed to the insurer.

(3.) If the disaster is occasioned by the assured himself or by a person for whom he is civilly responsible.

(4.) If the disaster is caused by war or insurrection of which the insurer has not undertaken the risk.

§ 1. In the first case, the insurer has a right to half of the agreed premium, not exceeding half per cent. of the amount insured.

§ 2. The assured, within eight days of receiving information of the existence of an inherent defect in the thing insured which would, unless declared, invalidate the insurance, must give notice of it to the insurer, who may declare the policy to be of no effect on restoring half the unearned premium.

438. If the assured becomes insolvent before the risk is terminated and owes the premium, the insurer may require security, and if it is not forthcoming may annul the contract.

§ 1. The assured has a similar right if the insurer becomes insolvent or goes into liquidation.

439. All loss and damage that the thing insured sustains due to accident or circumstances beyond control of which he has undertaken the risk are at the charge of the insurer.

§ 1. The indemnity payable by the insurer is settled by the value of the thing insured at the time of the accident, having regard to the provisions of Art. 448 * and the following paragraphs.

1. If the value is assessed by arbitrators nominated by the parties, the insurer cannot dispute it.

* This Article relates to growing crops.

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2. If this has not been done, the value may be proved by any legal evidence.

§ 2. The assured has no right to abandon to the insurer things saved from the disaster, and the value of such things is not included in the indemnity payable by the insurer. Cf. Arts. 616, 623 *post*, pp. 175, 177.

440. The assured must, under penalty of being himself liable for loss and damage, give notice to the insurer of any disaster within eight days following that on which it occurred or on which he obtained information of it.

441. An insurer who pays for injury to or loss of the things insured, is subrogated to all the rights of the assured against a third party who has caused the disaster, the assured being answerable for every act by which he has prejudiced such rights.

§ 1. If the indemnity only covers a portion of the damage or loss, the insurer and the assured can agree to avail themselves of such rights each in proportion to the amount due to him.

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596. A policy of Marine Insurance must state, in addition to the matters prescribed in Art. 426:—

(1.) The name, description, class, nationality and tonnage of the ship.

(2.) The name of the commander.

(3.) The place to which the cargo is or ought to be carried.

(4.) The port from which the ship has sailed, will sail, or is intended to sail.

(5.) The ports at which the ship is intended to load or discharge or call.

§ 1. If the statements required by this Code cannot be made, either because the person making the insurance is ignorant of them or on account of any peculiarity in the insurance, other declarations must be substituted for them sufficient to define the object insured.

F. 332, I. 605, H. 592, R. 550, S. 738, E. 174.

597. An insurance against perils of the sea may be effected on all things and values that can be assessed in money that are exposed to the perils.

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B. 168, F. 334 (1885), G. 782, 783, I. 606, H. 593, 594, R. 538, 545, S. 743, Sc. 230, E. 176.

598. An insurance against perils of the sea may be made in time of peace or of war, before or during a voyage, for a whole voyage or for a fixed period, for a voyage both out and home, or for either singly.

F. 335, I. 609, H. 594, S. 744, E. 177.

599. When the captain or owner insures cargo, it can only be insured for nine-tenths of its actual value.

S. 750, E. 187.

600. Insurances are void which are made upon :—

(1.) Wages and earnings of the crew.

(2.) Goods which are bottomried for their full value and without the perils to be insured against being excepted.

(3.) Things the trade in which is contraband by the law of the kingdom, and ships, whether national or foreign, engaged in carrying them.

B. 168, 176, 184, 191, F. 334 (1885), 347 (1885), G. 784, 790, I. 607, H. 599, R. 547, S. 781, E. 190.

601. Goods that are carried may be insured for their full value, reckoning their invoice price, together with the expenses of loading and freight, or reckoning their price current at their destination on arrival without damage.

§ 1. A valuation made in the policy which does not state on which basis it is made may be referred to either of those herein defined, and Art. 435 does not apply to it unless the value is in excess of the highest price.

B. 187, F. 332, 339, G. 790, I. 612, H. 612, 613, 615, R. 551, S. 752, 754, Sc. 233, E. 182.

602. If the policy is silent as to the period of the risk taken by the insurer, it will commence and terminate as follows :—

(1.) As to the ship and its appurtenances, from the time she weighs anchor to leave port until she is anchored and safe in her port of destination.

(2.) As to cargo, from the time the goods are taken on board the ship or into lighters intended to take them to the ship until they are landed at their destination.

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§ 1. If the insurance is made after the voyage has begun, the period of risk runs from the date of the policy.

§ 2. If the discharge is delayed by the default of the consignee, the insurer's risk terminates thirty days after the arrival of the vessel at her destination.

B. 172, F. 328, 341, G. 827, 828, H. 624-634, I. 448, 601, 611, R. 557-559, S. 738 (11), E. 168, 184.

603. The liability of the insurer is limited to the sum insured.

§ 1. If the subject matter of the insurance sustains successive accidents during the period of the insurance the assured must bring into account, even in case of abandonment, sums paid to him or which are due for previous accidents.

G. 845, I. 624, R. 568, Sc. 253.

604. Unless otherwise agreed, all losses and damages that happen to the things insured during the period of the insurance by tempest, shipwreck, stranding, collision, compulsory change of course, voyage, or ship, jettison, fire, unlawful attack, explosion, leakage, theft, or quarantine imposed, and in general by all other perils of the sea, are at the risk of the insurer, except such matters as those in which, by the inherent quality of the thing or by law or an express clause in the policy, the insurer is free.

§ 1. An insurer is not liable for the barratry of the commander unless specially agreed, and such agreement will, moreover, be of no effect if a commander mentioned by name is subsequently changed without the knowledge or consent of the insurer.

§ 2. An insurer, who expressly agrees to undertake war risks without precise specification of them, is answerable for loss and damage caused to the things insured by operations of war, reprisal, embargo by order of State, capture and attack of all descriptions, by the act either of a friendly or inimical government, whether exist-

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ing *de jure* or *de facto*, and whether recognised or unrecognised, and in general for all incidents and accidents of a state of war.

§ 3. An increase of premium stipulated for in time of peace for the contingency of a war or other event, but the amount of which is not stated in the contract, will be settled by taking into consideration those perils, circumstances, and stipulations that are mentioned in the policy.

B. 173, 178, 184, F. 350, 352, 353, G. 824, 825, 852, 853, I. 610, 615, 616, 618, H. 637, 640, 641, R. 539, 550 (n.), 555, S. 755, 756, 767, Sc. 248, 249, E. 186, 192, 195.

605. Where there is a doubt as to the cause of the loss of the things insured it is presumed to have been by perils of the sea, and the insurer is liable.

B. 186, G. 865, 866, I. 633, H. 667, S. 798, Sc. 258, E. 215.

606. A condemnation by a foreign Prize Court carries a simple presumption of its validity in questions relating to insurances.

H. 658.

607. An insurer is not answerable for the expenses of the voyage, pilotage, towage, health visit, and other charges made on the ship on entering or leaving port, and tonnage, light, anchorage, health officer, and other similar charges on ships and cargo, unless they are of such a character as to be included in General Average.

F. 354, I. 619, R. 571, E. 196. See decree of 16th Sept., 1890, p. 203 *post*.

608. Every voluntary deviation in the course, alteration in the voyage, or change of the ship by the assured, frees an insurer of ship or freight from liability.

§ 1. The provisions of this article apply to an insurance on cargo where the assured has agreed (to the deviation).

§ 2. An insurer in the case provided for in this article and in § 1 has a right to the whole premium if the period of the risk has commenced.

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B. 182, F. 351, G. 817, 818, I. 617, H. 638, 639, R. 572 (8), S. 756 (1), Sc. 255, E. 193.

609. If the insurance is on merchandise for a voyage out and home, and if the ship after reaching her first port of destination does not load a return cargo, or only loads a part cargo, the insurer will only get two-thirds of the premium unless otherwise agreed.

B. 186, F. 356, I. 620, R. 579, S. 757, E. 198.

610. When an insurance is properly made on goods to be carried in different ships, with special notice of the amount secured on each, if the goods are, in fact, shipped in a less number of vessels than is specified in the policy, the insurer is only answerable for the amount that he has insured in the vessel or vessels which receive the cargo.

§ 1. An insurer may in the case provided for in the Article receive half the agreed premium in respect of the goods whose insurance has been without effect, provided always such indemnity does not exceed ½ per cent. of their value.

B. 194, F. 361, G. 820, 821, I. 621, H. 652, S. 759, E. 203.

611. If the commander is at liberty to touch at a port to complete or load a cargo, the insurer does not take the risk of the articles insured until they are stowed on board, unless otherwise agreed.

F. 362, I. 622, E. 204. The *Copernicus*, 1896, P. 154.

612. If the assured orders the ship to a more distant place than is mentioned in the policy, the insured does not undertake the risks of the additional voyage.

§ 1. If on the other hand the voyage is shortened, by being brought to an end at a port of call, the insurance remains of full force.

B. 195, F. 364, G. 817, I. 623, H. 653, R. 579, S. 763, E. 206.

613. The clause "free of average" frees the insurer from all and every damage, except in cases which give rise to an abandonment.

B. 198, I. 625, H. 646, R. 573.

614. If the assurance is on liquids or on goods which are

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liable to deteriorate or waste, an insurer does not answer for losses unless they are caused by striking, shipwreck, or stranding of the ship, or by discharging and reloading in a port of distress.

§ 1. When an insurer is obliged to pay for damages referred to in this Article, he may deduct the ordinary waste.

B. 185, F. 352, 355, G. 825 (3), I. 615, H. 643, R. 572 (8), 575, S. 756 (6), E. 197.

615. The assured must give notice to the insurer within five days of the receipt of documents which show that the goods insured were exposed to the perils and were lost.

B. 206, F. 374, G. 822, I. 627, H. 654, R. 560, 561, S. 765, Sc. 245, E. 214.

TIT. III.

Abandonment.

ART. 616. Property which is insured may be abandoned in the following cases:—

(1.) Capture.
(2.) Embargo by order of a Foreign Power.
(3.) Embargo by order of the Government after the voyage has begun.
(4.) Total loss of the insured property.
(5.) Such other cases as may be agreed on by the parties.

§ 1. A ship which cannot be repaired (*i.e.*, a constructive total loss) is equivalent to a ship totally lost.

B. 199, F. 369, G. 865, H. 663, 666, I. 632, R. 563, S. 773, 787, 789, Sc. 6, 256, 257, E. 211.

617. The assured may abandon to the insurer without being obliged to prove the loss of the ship, when, reckoning from the day on which the ship sailed or from the day on which the last news was received, there has been no news of her for the following terms: Six months, if her voyage was to an European port; one year, if to a more distant place.

§ 1. If the insurance is for a fixed period, after the terms prescribed in this Article have elapsed,

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the loss of the ship is presumed to have occurred within the insured time.

§ 2. If there are several successive insurances, the loss is presumed to have occurred on the day following that to which the last news refers.

§ 3. Nevertheless, if it is subsequently proved that the loss in fact occurred at a time not covered by the policy, the insurance must be repaid with legal interest.

B. 207, 208, F. 375, 376, G. 835, 866-868, H. 667, 674, I. 633, R. 563, S. 798, 799, Sc. 258, E. 215.

618. When a ship is deemed to be a total loss, goods which are insured and loaded on board her may be abandoned, if within three months next after the event no other ship can be obtained to reload them and carry them to their destination.

§ 1. If, in the case for which provision is made in this Article, the insured goods are forwarded in another ship, the insurer is liable for damages they may sustain, expenses of loading and reloading, warehouse rent, and watching, increase of freight and salvage up to the amount of the sum insured, and, so far as this sum is not exhausted, will continue to bear the risks of the voyage.

B. 223-227, F. 390-394, S. 634, 820, 822-823, 824 (5), 831, 838-852, H. 478, 628, 632, 673, I. 634, 635, R. 584, S. 792-794, E. 228-231.

619. An abandonment of property insured when captured or placed under embargo can only be made after the lapse of three months from receipt of the news of the capture or embargo, if it takes place in European seas, and of six months, if it takes place elsewhere.

§ 1. If the goods are of a nature to suffer rapid deterioration, the terms prescribed in this Article will be reduced by one-half.

B. 220, F. 387, G. 865, 868, H. 663, 665, 668, 673, I. 636, S. 795, Sc. 259, E. 225.

620. Notice of abandonment must be given to insurers within three months, reckoning from the day on which

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knowledge of the disaster is obtained, if it happens in European seas; within six months, if in African seas, or those West and South of Asia and East of America; and within a year, if elsewhere.

§ 1. In cases of capture or embargo by order of a Government, these terms only begin to run from the termination of those prescribed in the preceding Article.

§ 2. When the terms prescribed by this Article have expired, the assured will not be allowed to abandon, but preserves his right of action for Average losses.

B. 203, 220, F. 373, 387, G. 865, 868, 869, H. 663, 665, 667, 668, 671, I. 637, S. 804, Sc. 260, E. 213, 225.

621. The assured, on communicating to the insurer news that he has received, may abandon and give notice to the insurer to pay the amount insured within the time fixed by the policy or by law, or may reserve his right to abandon during the legal periods.

§ 1. When he abandons, he must declare all insurances made or ordered, and sums borrowed on bottomry, so far as he is aware of them, on goods that are laden on board; if he fails to do this, the time for payment will be suspended until the day on which he makes such declaration, whilst no extension is allowed of the term prescribed by law for abandoning.

§ 2. In case of a fraudulent declaration, the assured loses all benefits of the insurance.

B. 210, 211, F. 378, 379, G. 873, H. 675, I. 638, S. 800, 804, Sc. 260, 261, E. 216, 217.

622. An abandonment only includes things which are covered by the insurance and at risk, and cannot be partial or conditional.

B. 202, F. 372, G. 870, H. 677, I. 639, S. 804, Sc. 262, E. 212.

623. Things which are insured belong to the insurer from the day on which notice of abandonment is given and either accepted by the insurer or adjudged to be valid.

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§ 1. The assured must deliver to the insurer all documents relating to the goods insured.

B. 216, F. 385, G. 871, 872, H. 678, I. 640, R. 569, S. 803, Sc. 263, E. 223.

624. A notice of abandonment has no legal effect if the facts on which it is based are not confirmed, or did not exist at the time at which the notice was given to the insurer.

§ 1. A notice of abandonment, nevertheless, is of full effect if, subsequently to it, things occur which, had they occurred previously, would have excluded the right to abandon.

B. 216, F. 385, G. 871, 872, H. 678, I. 640, R. 569, S. 803, Sc. 263, E. 223.

625. In case of capture, if the assured cannot give notice to the insurer, he may ransom the captured property without waiting for instructions from the insurer, provided, however, that in such a case he must acquaint the insurer, as soon as an opportunity offers, with the terms of the composition he has effected.

§ 1. The insurer has the option of taking the composition on himself or of rejecting it, and must give the assured notice of his choice within twenty-four hours of receiving the information.

§ 2. If he accepts the arrangement, he must, without delay, contribute his quota to the payment of the ransom in accordance with the agreed terms, and will continue to run the risks of the voyage in conformity with the terms of the policy.

§ 3. If he rejects the arrangement, he must pay the whole sum assured without delay, and has no claim upon any of the ransomed property.

§ 4. If the insurer fails to give any notice of his choice within the period prescribed, he is deemed to reject the arrangement.

§ 5. When the ship is ransomed, if the assured resumes possession of his property, damages sustained by it are deemed to be Average losses

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giving a right to compensation from the insurer, but if, in consequence of recapture, the property passes into the hands of a third party, the assured may abandon it.

I. 641, R. 581, S. 779, 801.

TIT. IV.

Bottomry.

626. A Bottomry contract must be in writing, and must state :—

(1.) The amount borrowed.
(2.) The premium agreed on.
(3.) The things on which the loan is secured.
(4.) The name, description, tonnage, and nationality of the ship.
(5.) The name of the commander.
(6.) The names and addresses of the lender and borrower.
(7.) A particular and specific description of the risks undertaken [*riscos tomados*] (*i.e.*, a description of the voyage or voyages).
(8.) Whether the loan is for one or more voyages or for a fixed time.
(9.) The time and place for repayment.

§ 1. The deed will be dated at the time and place at which the loan is made, and must be signed by the parties contracting, who state the quality in which they execute it.

§ 2. A Bottomry contract which is not in writing as prescribed in this Article, becomes a simple loan, for which the borrower is personally liable for payment of principal and interest.

B. 135, 140, F. 311, G. 684, H. 570, I. 590, S. 720, 721, Sc. 177, E. 150.

627. A Bottomry bond drawn to order is negotiable by endorsement on the same conditions, and confers the same rights and actions to secure payment as a Bill of Exchange.

§ 1. An endorsee takes the place of an endorser, both with regard to the premium and losses, but

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the warranty of the solvency of the debtor is limited to the principal, and does not include the premium unless otherwise agreed.

B. 144, 162, 163, F. 313, 314, G. 685, 687, H. 573, I. 592, S. 722, E. 154.

628. A contract of Bottomry can only be made upon the whole or a portion of the cargo, and upon freight earned jointly or separately, and can only be effected by the commander in the course of a voyage when there are no other means for prosecuting it.

B. 137, 157, F. 315, G. 681, H. 574, 575, 577, I. 593, 595, R. 381, S. 724, 725, Sc. 175, E. 155, 159.

It appears from this Article that Bottomry, strictly speaking, cannot be made on a ship at all, which must be mortgaged (Ch. VIII., Sec. II., p. 160 *ante*) if money is to be raised upon it, but see Art. 511 *ante*, p. 143.

629. A loan on Bottomry of a sum in excess of the actual value of the things on which it is made is valid, so far as such value goes; the borrower is personally liable for the excess without maritime premium and with interest at the legal rate only.

§ 1. If there is fraud on the part of the borrower, the lender may demand that the contract be set aside and that he be paid the amount lent with legal interest.

§ 2. Anticipated profit on goods that are carried is not deemed to be an excess in value, if it is separately valued in the Bond.

B. 158, F. 316-318, H. 576, I. 594, S. 726, E. 156-158.

630. If the things on which the Bottomry loan is effected are lost by accident or circumstances beyond control, within the time and place and by the risks undertaken by the lender, the borrower is free.

§ 1. If the loss is partial, the payment of the loan is reduced to the value of the bottomried articles which are salved, without prejudice to other privileged debts.

§ 2. If the loan is on freight, repayment of the loan is reduced, in case of disaster, to the amount due from the charterers, without prejudice to other privileged debts.

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§ 3. If the article that is bottomried is also insured, the value of it as salved will be apportioned between the principal of the bottomry loan and the amount insured.

§ 4. If, when the disaster happens, a portion of the bottomried goods are on shore, the loss of the lender will be limited to those on board, and he will continue to bear the risk on the goods which are safe, and which are forwarded in another ship.

§ 5. If all the bottomried goods are landed prior to the disaster, the borrower will pay the whole amount of the loan with the premium.

B. 164, 165, F. 325, 327, 331, G. 680, 691, H. 569, 588, I. 599, S. 719, 731, 734, 735, Sc. 174, E. 149, 165, 167, 172.

631. The lender contributes to General Average and relieves the borrower; any agreement to the contrary is a nullity.

§ 1. Particular Averages are not at the charge of the lender unless so agreed, but if, in consequence of a Particular Average, the bottomried goods do not suffice for the payment of sum borrowed and the premium in full, the lender will bear the loss resulting from such Average losses.

B. 166, 167, F. 330, G. 691, 725, H. 589, I. 603, S. 732, Sc. 179, E. 171.

632. If there are several Bottomry loans contracted in the course of the same voyage, the later in date is always preferred to the earlier.

§ 1. Bottomry loans contracted on the same voyage, and in the same port of refuge, during the same stay, are ranked together.

I. 671, 675.

633. The provisions of this Code concerning Marine Insurances and Averages apply to contracts of Bottomry when not incompatible with, and not altered by, this Title.

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TIT. V.

Average Losses.

ART. 634. All extraordinary expenses incurred for ship or cargo, jointly or separately, and all injuries sustained by ship or cargo during the time they are exposed to sea perils, are deemed to be Averages.

§ 1. But ordinary expenses incurred by the ship, such as are customary on entering and leaving port, as well as the payment of dues and other navigation charges, as also those expenses incurred to lighten the ship to enable her to pass shallows and sandbanks, and which are anticipated when she leaves port, are not considered to be Averages.

§ 2. Averages are regulated by the agreements of the parties, or, failing agreement, by the provisions of this Code.

B. 99-101, F. 397-399, G. 702, 703, H. 696-698, I. 642, R. 391, S. 806-808, E. 235-237.

635. There are two classes of Averages, Great or General, and Simple or Particular.

§ 1. All extraordinary expenses incurred and voluntary sacrifices made by the commander or by his orders, to avoid a danger and for the common safety of the ship and cargo from the time the cargo is laden and the ship has sailed until she has returned and discharged her cargo, are Great or General Averages.

§ 2. Expenses incurred on behalf of a damage sustained by the ship alone, or the goods alone, are Simple or Particular Averages.

B. 99-101, F. 397-399, G. 702, 703, H. 696-698, I. 642, 643, 646, R. 391, S. 806-808, Sc. 187, E. 235-237.

636. General Averages are shared in proportion between the cargo and one-half the value of the ship and freight.

B. 104, F. 401, G. 702, 718, H. 698, 704, 705, I. 647, S. 812, Sc. 187.

637. Particular Averages are borne and paid either by the

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ship or by the thing alone which has sustained the injury or caused the expenditure.

B. 104, 105, 107, 110, F. 401, 402, 417, G. 718, 723, H. 698, 727-729, I. 647, R. 396, 398, S. 810, 812, 854 (7, 8), Sc. 218, E. 237, 250, 251.

638. A survey and assessment of Averages sustained by the cargo, when visible externally, will be made prior to delivery; if not visible, a survey may be made afterwards, provided it is completed within forty-eight hours of the delivery, and this without prejudice to other evidence.

§ 1. The assessment referred to in this article decides what would be the value of the cargo if it arrived undamaged, and what is its actual value independent of the question of anticipated profit, but in no case can the cargo be ordered to be sold for the purpose of fixing its value unless the owner requires it.

I. 658.

639. There will be an apportionment of General Average for the purpose of contribution whenever the ship and cargo are preserved in whole or in part.

§ 1. The contributory values are composed :—

1. Of the whole value that the things sacrificed would have had at the time and place of discharge.
2. Of the whole value which the goods that are preserved have at the same time and place, with the addition of the amount they have been depreciated by the salvage.
3. Of the freight to be earned, deducting the expenses which would not have been incurred if the ship and cargo had been lost at the time the average loss arose.

§ 2. Wearing apparel and clothes, seamen's wages, passengers' luggage, ammunition and provisions of an amount sufficient for the voyage, although paid for out of the contribution, do not themselves contribute.

B. 105-107, F. 419, G. 725, H. 731, I. 648, 654, 655, S. 816, Sc. 208-212.

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640. Cargo for which there is no Bill of Lading or acknowledgment from the commander, or which is not entered in the list of Cargo or Manifest, is not paid for if jettisoned, but contributes to the Average fund if saved.

B. 109, F. 420, G. 710, H. 733, I. 649, S. 816, Sc. 190, 203.

641. Goods carried on deck contribute to General Average if saved.

§ 1. When they are jettisoned or injured by the jettison, they are not entitled to a share of the Average fund, and have only a right of action against the commander, the ship, or the freight, if they were carried on deck without the owner's consent, but there may be a special contribution between the ship, the freight and other goods carried in the same place without prejudice to the general contribution to General Average of the whole of the cargo.

F. 421, G. 710, H. 733, I. 650, S. 855, Sc. 190.

642. If, notwithstanding a jettison or cutting away of ship's apparel, the ship is not saved, there is no General Average contribution, and the goods which are salved are not liable for any payment as a contribution to the Average loss of goods which are jettisoned, damaged, or cut away.

§ 1. If the ship is saved by the jettison or cutting away of apparel, and whilst proceeding on her voyage is lost, goods which are saved only contribute to the jettison on the basis of their value as salved, deducting salvage expenses.

§ 2. Goods which are jettisoned never contribute to Averages sustained subsequently to the jettison by goods which are salved.

§ 3. Cargo does not contribute to payment for a ship which is lost, or condemned as unseaworthy.

B. 111-113, F. 423-425, H. 734, 735, I. 651, S. 856, 860, 861.

643. The provisions in respect to General and Particular Average apply equally to lighters, and goods loaded in such of them as are employed to lighten the ship.

§ 1. If goods which are discharged into lighters to

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lighten the ship are lost, the ship and the whole cargo will share in the loss.

§ 2. If the ship and the rest of the cargo are lost, goods discharged into lighters and which reach their destination do not contribute.

F. 427, H. 702-705, I. 652.

644. Goods which are still on shore do not contribute to losses sustained by a ship of which they were intended to form the cargo.

H. 706.

645. If, between the shore and the ship, either the lighters or the goods laden in them sustain an injury which is deemed to be General Average, such damage will be borne in the proportion of one-third by the lighters and two-thirds by the goods laden in them.

646. If, subsequent to the adjustment of Average, goods which have been jettisoned are recovered by their owners, these latter must return to the commander and those concerned the contribution they have received, deducting loss sustained by the jettison and salvage expenses, and dividing it amongst those concerned in proportion to the amount which each contributed to the sum received.

§ 1. If an owner of jettisoned goods recovers them and does not claim compensation, such goods do not contribute to Averages sustained by the remainder of the cargo subsequent to the jettison.

B. 115, F. 429, G. 732, H. 739, 740, I. 653, S. 863, Sc. 215.

647. The ship contributes on her value at the place of discharge, or on the price for which she is sold, deducting the sum total of Particular Averages, even such as have been sustained subsequently to the General Average.

B. 110, G. 719, H. 727, I. 654, S. 854 (7, 8), Sc. 207.

648. Goods and other articles which contribute, as well as articles which are jettisoned or sacrificed, are assessed at their value, deducting freight, entrance and other expenses of discharge, taking into consideration Bills of Lading and invoices, or, failing these, any other means of proof.

§ 1. If the quality or value of the goods is stated

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in the Bills of Lading and they are worth more, they will contribute upon, and be paid upon, the real value, if saved, but if jettisoned or averaged, their value will be regulated by the Bill of Lading.

§ 2. If the goods are worth less, they will contribute on their nominal value if saved, but will get only their real value if jettisoned or injured.

B. 107, 108, F. 415, 418, G. 720, 721, H. 727, I. 655, 656, S. 854, Sc. 208.

649. Goods which are loaded will be assessed at their value at the place of discharge, after deducting freight, entrance and other discharging expenses.

§ 1. If the apportionment is made in the same country as that from which the ship sailed or was to sail, the value of the goods loaded will be determined by purchase price, augmented by the expense of getting the goods on board, but not including the premiums of insurance.

§ 2. If the goods are put on board in a damaged condition, they are assessed at their actual value.

§ 3. If the voyage is given up or the goods are sold in another country, and the Average cannot be adjusted there, the value of the goods at the place where the voyage is abandoned or the net proceeds obtained by the sale are taken as the contributory value.

G. 721, H. 728, I. 656, S. 854, Sc. 208.

650. Great or General Averages will be adjusted and apportioned in accordance with the Law in force at the place where the cargo is delivered.

S. 731, H. 722, I. 658.

651. All successive General Averages are adjusted together at the end of the voyage, as if they were one and the same Average.

§ 1. The provision of this Article does not apply to goods received or discharged at a port of call, but the exception only affects those goods.

S. 850.

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652. The adjustment and apportionment of General Average is carried out at the commander's instigation, and, if he neglects it, at the instigation of the owners of the ship or cargo, without prejudice to the responsibility of the first named person.

§ 1. The commander must produce all the ship's books and other papers relating to the disaster, the ship, or the cargo, with his report and proper protest.

B. 118, F. 414, G. 730, H. 724, 726, I. 658, S. 851, 852, Sc. 214.

653. No action for Average can be sustained against a charterer or consignee of cargo if the commander has received the freight and delivered the cargo without protest, even if the freight has been paid in advance.

F. 435, G. 733, I. 659, Sc. 217.

TIT. VI.

Putting into a Port of Refuge.

ART. 654. The following are good causes for putting into a port of refuge:—

(1.) Provisions, water, or fuel running short.

(2.) A well-founded fear of enemies.

(3.) Any accident which renders the ship incapable of continuing her voyage.

S. 819.

See, however, Art. 657 *post.*

655. In any of the cases mentioned in the preceding Article, the commander may, after consulting the principal members of the crew, and entering the resolution arrived at in the log and signing it, put into port.

§ 1. Persons interested in the cargo laden on board may protest against the decision arrived at to put into a port of refuge.

§ 2. The commander must, within forty-eight hours of his arrival at a port of refuge, make his report before the proper authority.

I. 516-519, S. 819.

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656. The expenses incurred by putting into a port of refuge are on account of the shipowner or charterer.

B. 103, I. 646, S. 821. And see notes thereto, as to *York-Antwerp* Rules, Sc. 188 (7), 195.

This appears to mean that the expenses are Particular Average on the person in whose interest the ship put into port.

657. Any putting into a port of refuge not caused by the fraud, neglect or default of the owner, commander or crew, is deemed to be legitimate.

658. When the putting into port is on account of the following reasons, it is not deemed to be legitimate :—

(1.) If the deficiency of provisions, water or fuel arises from an insufficient original supply of them, or if they have been lost in consequence of bad stowage or negligence.

(2.) If the alleged fear of enemies has no justification in fact.

(3.) If the accident which disables the ship from proceeding on her voyage is caused by want of proper repairs, fittings and equipments, or by bad stowage, or is the consequence of the erroneous arrangements or imprudence of the commander.

S. 820.

659. In case of putting into a port of refuge for a legitimate reason, neither the owner nor the commander is answerable for damages which may accrue from it to shippers or cargo-owners.

§ 1. If there is no legitimate cause, the commander and owner will be jointly answerable up to the value of the ship and freight.

S. 821.

660. A discharge of cargo in a port of refuge will only be permitted when necessary for repairing the vessel or making good damage to the cargo. In such cases, when within the realm and its Colonial possessions, permission must be obtained from the proper Judge, and, when abroad, from the Consular officer, if there is one, and if there is none, then from the local authority.

G. 504, S. 822.

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661. The commander is responsible for the custody and preservation of cargo when so discharged, unless occasioned by circumstances which are beyond control.

S. 823.

662. Damaged cargo will be conditioned or sold as circumstances may point out, by leave of the authorities named in Art. 660. The commander is bound to prove to the shipper or consignee the regularity of the course he has taken, under pain of answering for the value of the property in good condition at its place of destination.

S. 824.

663. The commander is answerable for damages caused by any unnecessary delay in a port of refuge, but if he is there on account of fear of enemies' vessels, his departure will be decided upon in council with the principal members of the crew and those interested in the cargo on board in the same way as a putting into port is decided upon.

I. 646 (7), S. 825.

TIT. VII.

Collisions.

ART. 664. When a collision is purely accidental or caused by uncontrollable circumstances, there is no claim for any compensation.

B. 228, F. 407, G. 737, H. 536, 540, I. 660, S. 830, 832, Sc. 221, E. 242 (1). See Art. 669 *post.*

665. When a collision is caused by the default of one of the ships, the damages sustained will be made good by that ship.

B. 221, F. 407, G. 736, H. 534, I. 661, E. 242 (2), S. 826, Sc. 220.

666. When there is blame attaching to both vessels, the whole of the damages sustained are added together, and payment of the amount apportioned between the ships in proportion to the amount of blame attaching to each.

B. 229, F. 407, G. 737, H. 535, I. 662, S. 827, Sc. 220.

667. When the collision is caused by default on the part of a third ship and cannot be avoided, such [third] ship is liable.

G. 741, I. 664, S. 831.

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668. When it is doubtful which of the vessels caused the collision, each will bear its own loss, but both are liable jointly and severally for damage sustained by the cargoes and for compensation payable for personal injuries.

F. 407, G. 737, H. 538, I. 662, S. 828, Sc. 221.

669. A collision is presumed to be accidental except when there has been a breach of the Regulations for Preventing Collisions at Sea, or of special Harbour Regulations.

Sc. 219.

670. If a ship which has been damaged in a collision is lost on her way to a port of refuge for repairs, she is presumed to have been lost in consequence of the collision.

G. 739, H. 539, S. 833.

671. The liability of the ships provided for in the preceding Articles does not exempt the actual wrong-doers from their liability to the person injured and to the shipowners.

G. 736, I. 663, S. 829.

672. In any case in which the commander is liable, if the ship, at the time of the collision and in observance of regulations, was under the direction of a harbour or coasting pilot, the commander has a right to compensation from the pilot or the Pilotage Corporation, if there is one.

B. 228, G. 740, S. 834.

Reading Arts. 671, 672 and Art. 492 (4) and 492, § 3 together, it appears that if the pilot is compulsorily employed, he is directly liable, to the exclusion of the shipowner, and if voluntarily, or in pursuance of a custom or regulation not having the force of law, he or the Corporation is indirectly liable for the results of his want of skill or negligence.

The previous Articles have spoken of the ship as liable, but having regard to this Article and Art. 492 *ante*, and the fact that "collision" is not one of the matters giving a privileged claim on the ship (Art. 578 *ante*), it would appear that in this Title "Ship" is only used, as it frequently is in Great Britain, to designate the liability of those on board and through them the owner except in the specially excepted cases specified in Art. 492.

The Pilotage Service of Portugal is regulated as a branch of the Public Service by a decree of 6th May, 1878.

673. Claims for losses and damages occasioned by a collision between ships must be made before the proper Local Authority of the place where it happened, or of the first port

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that the ship reaches after it, within three days, under pain of being barred.

§ 1. Default in making a claim does not, so far as personal injuries and damage to cargo are concerned, prejudice those concerned who are not on board or who are prevented from expressing their wishes.

B. 231, F. (1891) 436, I. 665, S. 835, 836, Sc. 323, 325.

674. Questions about collisions are decided as follows:—

(1.) When they happen in harbours or territorial waters, by the law of the place.

(2.) When on the high seas, and between vessels of the same nationality, by the law of that nation.

(3.) When on the high seas, and between vessels of different nationalities, each is governed by the law of its own flag, and cannot recover more than that law allows.

Portugal appears to treat six geographical miles as the zone of territorial waters, that limit being expressed in a treaty with Spain as to Fishing Rights (see S. 826 (n.), p. 88 *ante*).

675. An action for loss and damage arising from a collision may be commenced either in the Court of the place where the collision happened, or in that of the domicile of the owner of the vessel proceeded against, or in that of the ship's home port, or in that of the place where the ship may be.

B. 232, I. 665, Sc. 323, 325.

TIT. VIII.

*Salvage and Assistance.**

ART. 676. No one is allowed to take possession of wrecked

* A distinction between "Salvage" and "Maritime Assistance" runs with more or less clearness through most of the Continental Codes, but is nowhere defined as clearly as in Arts. 681, 682 of this Code, and Arts. 561 and 562 of that of Holland, from which latter the Portuguese law on this point appears to be taken; the distinction is unimportant when the award rests entirely in the discretion of the court, as in Portugal and England, but a somewhat similar distinction has been drawn in England between a ship which but for the service would be lost and one which might be preserved by other means.

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vessels or of wreckage, or of cargo or any goods, or other private property, which are washed ashore by the sea, or picked up on the high seas.

H. 546, I.M.M.C. 125.

677. Any one who salves a ship or goods that are wrecked and does not at once deliver them to the owner or his representative on demand and on giving bail for the salvage expenses, will forfeit all claim to an award for assistance or salvage, and will be liable for damage occasioned by his retention of them, without prejudice to criminal proceedings if there is ground for them.

H. 548.

678. Any one who salves or recovers a ship or goods at sea or ashore in the absence of their owner or his representative, and when they are unknown, must at once remove and deliver the property to the Custom House Official of the nearest place to that at which the property was salved, and if he does not do so, will forfeit any right he might have to any salvage or assistance award, and will be liable for losses and damages, without prejudice to criminal proceedings if there is ground for them.

H. 550, I.M.M.C. 125.

679. The salvage of ships aground, in peril, or wrecked, as also of goods cast ashore, whether the commander is present or absent, must be carried out under the supervision of the proper authority.

§ 1. The following are the duties of the person in authority :—

1. To draw up an inventory of the salved property and take proper steps for its preservation.
2. To order a sale of such articles as are unclaimed and liable to deteriorate, or the preservation and custody of which is clearly contrary to the interests of the owner.
3. To advertise within eight days next after the salvage in a local newspaper, or in one published in the neighbourhood, full par-

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ticulars of the disaster, pointing out the marks and numbers on the goods and inviting those concerned to claim them.

4. To report to his superior what has happened, and what steps he has taken.

5. To do everything else that special regulations may order.

H. 551-555, I.M.M.C. 123.

680. When the owner or his representative appears and claims the goods, the salved property or its proceeds will be delivered to him when he proves his title and pays the salvage award and other charges, or gives sufficient security for them.

§ 1. If the claimant's title is doubtful, or there is an intervention of third parties, or a dispute as to the salvage award, the parties will be sent before a Judge.

§ 2. If no claimant appears in answer to the advertisements mentioned in clause (3) of the preceding Article, the salved property will be sold by public auction, and the proceeds, after deducting salvage charges, will be placed in a Public Bank.

H. 556.

681. Salvage awards are due:—

(1.) When ships or goods are found derelict on the high seas or on the shore, and are salved or recovered.

(2.) When goods are salved from a ship which is ashore or stranded on rocks, and in such danger that she offers no safety to her cargo or refuge to her crew.

(3.) When goods are got out of a vessel practically broken up.

(4.) When a ship in imminent peril and offering no further security is abandoned by her crew, or in their absence is taken possession of by persons who endeavour to salve her and bring her into port with the whole or a part of her cargo.

(5.) When a ship and cargo, either together or separately, are got afloat or brought into a safe port by the aid of third parties.

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G. 742, H. 562, Sc. 224.

682. Assistance awards are due :—

(1.) When a ship which is stranded or ashore is got off and afloat with its cargo with the assistance of third parties.

(2.) When a ship in distress at sea is helped and brought into a safe port with the assistance of third parties.

G. 742, 749, H. 561, Sc. 224.

683. The following cannot claim salvage or assistance award :—

(1.) Members of the crew.

(2.) Those who force their services.

G. 752, H. 545, I.M.M.C. 120.

684. All contracts made whilst the danger exists may be repudiated on the ground of being excessive, and reduced by the Judge who has jurisdiction.

G. 743, H. 568, I.M.M.C. 127, Sc. 227.

685. If there is no agreement, salvage and assistance awards are made by the Judge who has jurisdiction, having regard to the rules of equity and taking into account especially the following circumstances :—

(1.) The nature of the service.

(2.) The zeal displayed.

(3.) The time occupied.

(4.) The services rendered to ship, people and goods.

(5.) The expenses incurred.

(6.) The injuries sustained by the salvors or helpers.

(7.) The number of persons actively engaged.

(8.) The peril to which such persons and their ship were exposed, and the value of their ship.

(9.) The peril which threatened the ship, the people, and the goods that were salved.

(10.) The actual value of the salved property, deducting expenses.

G. 744, 746, H. 561, 563, I.M.M.C. 126, 121, 134, Sc. 225. Under the former Code, Arts. 1600, 1602, the amount of salvage was in the first instance settled by arbitrators appointed by the Judge with an appeal to him, Art. 1603, and see as to obtaining payment Decree of 16th Aug., 1866, *post.*

686. An award of salvage or for assistance includes all

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expenses incurred by the salvors or helpers, but does not include fees, charges, dues, and taxes, or charges for the custody and preservation of the salved property, or for the valuation and sale of it.

§ 1. An award for assistance is made at a lower figure than one for salvage.

§ 2. The value of the property salved only exercises a secondary influence on the amount of the award.

G. 745, H. 561, Sc. 226.

687. When many persons take part in rendering services to a ship or her cargo, the award must be apportioned in proportion to the services of the people themselves and of the things employed in the said services.

§ 1. In doubtful cases, the award will be apportioned to each individual.

§ 2. Those who have exposed themselves to danger in rendering life salvage are admitted to a share in the award made under the above-mentioned conditions.

G. 750, Sc. 228.

688. When the salvage service or assistance is rendered by another ship, half the award belongs to the owner, a quarter to the commander, and a quarter to the rest of the crew in proportion to their respective wages, unless otherwise agreed.

G. 751, I.(M.M.C.) 138, Sc. 228.

689. The owner of salved property is not personally liable to pay salvage or assistance awards.

§ 1. A consignee holding a Bill of Lading is personally liable up to the value of the goods which are delivered under it.

G. 755.

690. Salvage or assistance in harbours, rivers or territorial waters will be rewarded in accordance with the laws of the place where it is effected, and on the high seas in accordance with the law of the salving or assisting ship.

691. Claims for salvage awards or for assistance may be

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brought either in the Court within the territorial jurisdiction of which the service was rendered, or before the Judge of the place where the owner of the salved property is domiciled, or before the Judge of the ship's home port, or of the port where she may be.

G. 756, H. 567, I.M.M.C. 126.

END OF BOOK III.

ARTICLES EXTRACTED FROM BOOKS I. AND II. OF THE COMMERCIAL CODE OF PORTUGAL.

Relating to Maritime Matters.

Book I.

Tit. V.

The Register.

45. A Mercantile Register will be kept at each Tribunal of Commerce by the secretary, who as regards this function will be deemed a public officer.

46. The Mercantile Register will contain :—

(1.) An official list of traders under their own names.

(2.) An official list of trading firms.

(3.) An official list of merchant ships; in the offices of the Tribunals of Commerce situated in towns selected by the Government.

(4.) A book in which documents requiring registration are entered.

47. Registration of individual traders (1) is optional, that of firms and ships (2) and (3) is obligatory.

49. The following matters must be entered on the Mercantile Register (*inter alia*) :—

(8.) Contracts for building, execution of heavy repairs, acquiring, transferring and mortgaging ships, and variations and revocations of them.

(9.) Attachments and distraints on ships.

52. The Register Book of ships will give the name of the ship, her gross tonnage, rig, description and power of engines

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if a steamship, the place at which and time when the hull and engines were constructed, what the hull is built of, and its principal dimensions, its distinguishing signal in the International Code of Signals and the names of domiciles of the owner or co-owners if such there be.

§ 1. If a vessel is insured or classed the documents relating to the matter should be produced that they may be entered on the Register.

53. The official lists and entries will be made up from extracts, and will give a reference to the respective documents and declarations in the chronological order of their production.

§ 1. Entries relating to traders and ships will always refer to the official lists, and those relating to persons who are not traders will give their names, condition, profession, and residence.

§ 2. Documents which are produced will remain in the custody of the office.

54. Foreign firms which have a branch office or any sort of agent within the realm must produce in the Mercantile Registry, over and above the documents required for natives, a certificate from a Portuguese Consul that they are properly constituted and carry on business in conformity with laws of their own country.

57. Documents that require to be entered on the Mercantile Register only become effective as regards third parties from the date and in the order of registration.

§§ 1, 2 relate to agriculture and antenuptial agreements.

58. The proper persons to require registration of documents subject to registration are :—

(1.) Registered traders as to documents relating to them.

(2.) (Relates to married women traders.)

(3.) The owners or purchasers of ships or their consignees and correspondents in matters relating to the registration and transfer of ships.

(4.) Creditors who hold mortgages, attachments or sequestrations upon ships so far as relates to the entry of these documents.

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Tit. VII.

Brokers.

64. The profession of a broker is personal, public and masculine and by royal appointment.

65. A broker must be a Portuguese citizen either by birth or naturalisation, and over and above being of legal commercial capacity must enjoy a good character and be a good man of business.

§ 1. He may employ a substitute, approved by the Governor, when he is unable to act himself and will be responsible for him.

66. The business of a broker is :—

(1.) To buy and sell for those who employ him goods, ships, . . . property depending on maritime risks. . . .

(2.) To negotiate . . . insurances, charter parties and loans.

80. Brokers are forbidden :—

(1.) To trade on their own account.

(2.) To insure commercial risks or have an interest in such.

Book II.

Contracts peculiar to Commerce.

Tit. II.

Companies or Partnerships.

Chap. I.

General Principles.

Sect. I.

The Nature and Description of Companies.

110. Companies formed in a foreign country, but which are established and carry on their main business within the realm, are treated in all respects as native companies, and are subject in all matters to this Code.

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111. Companies legally established in a foreign country, and which establish a branch or any sort of representative within the realm, are subject to the regulations of this Code so far as it relates to the registration and publication of corporate acts and orders by such representative in the same way as agents of national companies are, and as to insolvency in the terms of Art. 745, § 1.

§ 1. The representatives of companies to whom this article refers are under the same liability to third parties as the managers of national companies.

112. Foreign companies which do not satisfy the regulations of the two preceding articles will be subject to prosecution by Portuguese law, and will render their representative, of whatever description he may be, personally and entirely responsible for all engagements contracted in the exercise of his functions as agent.

TIT. XV., CHAP. I. and CHAP. II., SECT. I. on *Insurance* are set out at pp. 166 *et seq. ante*.

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SUPPLEMENT.

EXTRACTS FROM DECREES AND LAWS STILL IN FORCE WHICH AFFECT THE MARITIME LAW OF PORTUGAL.

DECREE OF 8TH JULY, 1863.

Begins with a long preamble as to the propriety of Navigation Acts in general, and specially referring to the English Act under the Commonwealth.

TIT. I.

The Nationality of Ships.

CHAPTER I.

The Origin of the Ship.

Art. 3. In addition to Portuguese built ships vessels become Portuguese:—

(1.) If bought by Portuguese subjects, on payment of tonnage dues and registration.
(2.) If captured and declared good prize.
(3.) If confiscated for a breach of law.
(4.) If belonging to legally authorised navigation or towing companies.

CHAPTER II.

The Ownership of Ships.

Art. 4. Ships must be entirely owned by native or naturalised Portuguese.

§ 2. A foreigner not naturalised who obtains a

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Portuguese vessel by inheritance or gift must transfer it (to a Portuguese) within thirty days under penalty of the ship being forfeited to the informer.

Art. 5. If a foreign ship be acquired by a Portuguese subject with a reserve in favour of an unnaturalised foreigner, it will, if the fact be discovered, be sold by auction and the proceeds given to the Marine Hospital.

Art. 6 repeats Art. 3 (4).

Art. 7. Mere possession of a ship without title never confers the ownership on the possessor. (See Art. 487 *ante*, p. 134.)

Chapter III.

Commander, Officers and Crew.

Art. 8. The commander or skipper and the supercargo (if any) must be native or naturalised Portuguese.

Art. 9. At least two-thirds of the crew must be native or naturalised Portuguese.

Tit. II.

Proofs of Nationality.

Art. 10. Flag and Papers. Art. 11 describes the flag.

Chapter V.

Ships' Papers.

Art. 12. These are: 1. The Registered Title. 2. The Royal Passport. 3. The Muster Roll. 4. Bills of Lading and Charter Parties. 5. Cargo Manifest and Custom House Clearance. 6. Receipts for Dues. 7. Cargo-book. 8. Account-book. 9. Log-book. 10. Bill of Health. 11. List of Passengers. 12. Copy of Commercial Code. The first three are absolutely essential in all cases.

Section I.

Title of Ownership.

Art. 13. All titles of ownership must be registered at the ship's home port, except when the ship is bought from a

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foreigner or bought as a prize ship; these must be registered in Lisbon.

Art. 14. The name and tonnage of the ship and name or names of owners and dates of acquisition must be registered, and all changes of ownership. A copy of the register on parchment will be given to the ship, signed by the Minister of Marine and sealed with the Royal seal.

Sect. II. *The Royal Passport*, and

Sect. III. *The Muster Roll*, are not printed as they can only relate to Portuguese vessels.

DECREE OF 16TH DECEMBER, 1863.

After a long preamble as to the difference of the ordinary Civil Jurisdiction and the Commercial Jurisdiction enacts:—

Art. 1. That naval intendants and harbour-masters, so far as concerns them, are not to consider any ship as judicially arrested or under embargo unless the embargo has been decreed by a presiding judge of a commercial tribunal of the first instance, or by the person who, according to the Commercial Code, represents him in places where there are no regularly constituted commercial tribunals.

Art. 2. That mail packets can only in very exceptional circumstances be embargoed by the said jurisdiction, and in this case the maritime authorities should carry out the judicial decision, as far as it concerns them, because the responsibility, should there be such, rests entirely with the person who has decreed the embargo.

Art. 3. That even when the commercial jurisdiction has laid an embargo upon a steam-tug this embargo can have no other effect than that of preventing its leaving the coast or its transfer to a third party, and must never be understood as impeding the service of the tug whenever such service may be requisitioned.

THE DISCIPLINARY CODE FOR MERCHANT VESSELS IS CONTAINED IN A LAW OF 4TH JULY, 1864.

In consequence of a representation that a British steamer, the *Ann*, had refused to pay a salvage award made against her

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for services rendered in getting her off the shore and the amount of which had been settled by the captain of the port.

A Royal Decree was issued on the 16th Aug., 1866.

That in the case of any captain of a ship refusing to pay the award made for maritime assistance by the harbour-master in accordance with the last part of Art. 62 of the regulations for the police of ports which modifies Art. 1650 (now Act 682,685) of the Commercial Code, the said harbour-master must forward to the secretary of the Commercial Court concerned an account of the said award accompanied by a detailed report of the circumstances and a list of the witnesses, in order that the said official may compel the owner of the ship, or in default, the captain or the consignee, to pay the award as fixed by arbitrators.

Art. 62 is as follows: The captain of the port must keep in some place convenient to the bar of the harbour such anchors, kedges, cables, hawsers, and a boat to render assistance to a vessel in distress and must have a certain number of men told off who will assemble to do the work on an agreed signal being made. The shipowners will pay a proper award made by the captain of the port to the persons employed and also for the use of and damage to the gear used.

LAW OF 27TH DECEMBER, 1870.

Art. 4. In case of putting into port the following are not considered to be commercial transactions: disembarking and re-embarking goods for the purpose of repairing the ship, or for disinfecting it when it is in quarantine; transhipment into another vessel in case of unseaworthiness; the sale of damaged goods, provided that it be authorised by the Custom House concerned, or of any part of the cargo to obtain provisions for the crew, if the captain previously proves that he has been unable otherwise to raise money for the said purpose.

Art. 6. § 1. By home trade (*cabotagem*) is understood navigation of Portuguese vessels from one to another port of the kingdom, or from the latter to the adjacent isles, and *vice versâ*, or from one to another port of the same isle.

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By a Decree of 29th March, 1890, Tribunals of Commerce were established in all places where there was already a Court of First Instance, which means practically, so far as the Maritime Jurisdiction is concerned, in any port visited by foreign vessels. The Court is composed of a Judge, who is a lawyer, and a Jury selected or elected by the traders of the place.

Following the example of France and Italy, a Decree of 15th September, 1890, grants premiums on the employment of vessels under the Portuguese flag.

Another Decree of 16th September, 1890, replaces the various tonnage, anchorage, health and quarantine dues, by a tax or cargo duty levied on the amount of cargo loaded or landed, and upon the number of passengers embarked or disembarked in Portugal or the Portuguese Islands.

A Decree of 27th June, 1891, confirms the Treaty with Great Britain throwing open the river Zambesi and its affluents to public navigation.

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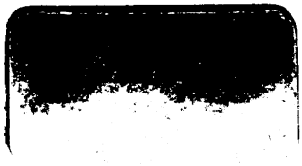

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